



SOUTH ASIA CO-OPERATIVE ENVIRONMENT
PROGRAMME

SURVEY OF ENVIRONMENTAL
LEGISLATION AND INSTITUTIONS
IN THE
SACEP COUNTRIES
SRI LANKA

A SACEP-UNDP JOINT PROJECT

By

K. H. J. Wijayadasa

&

W. D. Ailapperuma



A Publication of the
Central Environmental Authority of the
Ministry of Local Government, Housing & Construction

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SURVEY OF ENVIRONMENTAL LEGISLATION AND INSTITUTIONS IN SRI LANKA

INTRODUCTION

ON behalf of the South Asia Co-operative Environment Programme (SACEP), we were commissioned by the United Nations Development Programme (UNDP), to undertake a Study of Environmental Legislation and Institutions in Sri Lanka. In brief, our terms of reference were as follows :

- (a) To survey the state of Environmental Legislation and current trends and strategies in legislative developments in the fields of Resource Conservation, Environmental Protection and Management in Sri Lanka ;
- (b) To conduct an indepth analysis of the existing legislation and in particular, discuss the weak linkages, hiatuses, gaps, or any other areas and aspects where improvements and strengthening of legislation is deemed necessary, inclusive of improvements to the implementation machinery ;
- (c) The proposed amendments, additions or any updating of current environmental legislation ;
- (d) To make suggestions for the improvement of the institutional framework, organizational set-up and the administrative facilities desirable and deemed necessary for the most efficient implementation of the existing, as well as any new legislation contemplated.

We are privileged to present our Report to SACEP and UNDP under the following headings :

- (a) The Environmental Situation in Sri Lanka.
- (b) Governmental System and the Constitutional Provisions for Legislation.
- (c) National Strategies and Policies for Environmental Protection and Management.
- (d) Survey of Environmental Legislation and Institutions.
- (e) Review of Environmental Legislation and Institutions.
- (f) Conclusions and Summary of Recommendations.

It is hoped that this Study would lead to the introduction of appropriate Legislative Reforms and Institutional Adjustments in the near future.

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and Chairman,
Central Environmental Authority.*

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Colombo,
October 14, 1986.

CHAPTER 1

1. THE ENVIRONMENTAL SITUATION IN SRI LANKA

1.1 State of the Environment

1.1.1 Serious pre-occupation with environmental problems is a relatively recent phenomenon in Sri Lanka. While there have always been certain expressions of concern for issues relating to environment, it was only during the last decade that new problems emerged and others, which existed before, took on an entirely new dimension. These resulted from Sri Lanka's efforts to accelerate development as well as from technological advances and social changes.

1.1.2 In Sri Lanka for a long time, there has been little awareness of the close relationship between development and environment. Unplanned development, without due regard to the protection and management of the environment has led to a reduction in the natural diversity and the degradation of the environment. The increase of population and the changing patterns of living have made it necessary for people to change the natural environment. But such changes have not been made with a full awareness of their consequences on human health and welfare.

1.1.3 It is often contended that the deterioration and the degradation of the environment is a phenomenon peculiar to the industrialized countries. But there has been and continues to exist in Sri Lanka, a type and scale of environmental degradation, which is both massive and positively dangerous to sustainable development. In Sri Lanka forests have been depleted by shifting cultivation and over-felling. Grazing lands have been plucked down to their roots, while corals and mangroves have been deprived of their capacity to renew themselves.

1.1.4 In addition, uncontrolled urbanization and the spread of unplanned human settlements have led to the growth of high density suburbs, while the core-city suffers from blight and slum conditions. Over the years, Sri Lanka's forest cover has depleted to almost dangerous levels. The number of flora and fauna species threatened with extinction is around two hundred. Heavy erosion has reduced the fertility and productivity of the soils. Waterways are being polluted by the discharge of untreated industrial effluents, sewage and garbage.

1.1.5 One of the principal causes of environmental degradation in Sri Lanka has been the rapid growth of population. The population of Sri Lanka has doubled in the last 25 years and is nearly 16 million today. On a total land area of only 65,610 sq. kilo metres a population density of around 240 per sq. kilo metre is indeed high for any agricultural country. The accelerated development effort undertaken by the Government has generated its own environmental disturbances. At the same time, the people cannot be any longer deprived of the benefits of development programmes such as employment, higher incomes, better housing, water and other common amenities.

1.1.6 Therefore, the task that the Government is confronted with is one of reconciling development with environmental protection and management for sustainable growth. The absence of a centralized agency for the formulation of policies and the implementation of programmes connected with adequate protection and efficient management of the environment was also an important area of concern. Existing legislation with a bearing on the environment was either inadequate or scattered. There was no proper administrative arrangement for the management of the environment.

1.1.7 Much of the legislation already enacted was confined to the statute-book due to lack of administrative supporting services for their effective enforcement. There was very little or no co-ordination with regard to programmes on the environment at national, district or village level. This was the environmental situation, until the new legislation, the National Environmental Act, No. 47 of 1980 was adopted by the Government. This legislation established the Central Environmental Authority, as the policy making and co-ordinating body on the environment, thus fulfilling a long felt need.

1.1.8 In 1977, when the new government came into power, there were nearly fifty (50) different laws in the Statute Book, ranging from the Forest Ordinance to the Chank Fisheries Ordinance, with a bearing on the environment. These laws have been enacted over a period of one hundred years or more to meet different situations. Therefore, at this present stage of legal, institutional, socio-economic and cultural evolution of Sri Lanka, many of these laws are obsolete, ineffective or redundant. The fundamental problem that was evident was that all these laws were scattered, administered by different agencies, at different levels, without overall co-ordination and policy direction. There were several laws which were confined to the Statute Book only. Only a few of them had specific provisions for the setting down of environmental standards. In some instances, the punitive measures were found to be inadequate.

1.1.9 Thus, in a small country like Sri Lanka with a high density of population and with a clearly visible high delinquency rate—as far as the natural resources are concerned—it was of paramount importance that planning and execution of projects which have an impact on the environment, whether it be in the field of agriculture, industry or human settlements should be carefully scrutinized and monitored by a central agency. For the successful implementation of environmental policies and programmes, not only co-ordination at ministerial level was necessary, but effective co-ordination at the District and Village levels was essential—especially in view of the multi-disciplinary and inter-departmental character of the very subject of environment.

1.1.10 Enacting legislation and creating institutions and taking offenders to Courts cannot be the end objective of environmental protection and management. An attempt has also to be made to educate and inform the public and to actually involve them in the implementation of environmental programmes throughout the country. Involvement of school children through school curricular, use of mass media to inform and educate the public, training of public officers, village leaders, etc., and the involvement of voluntary agencies were some of the strategies that had to be developed.

1.2 Current Problems of Environmental Concern

1.2.1 With a rapidly growing population and with the consequent income and resource requirements, the development efforts of Sri Lanka have significantly affected the ecosystem and the resource base of the country. In the old agrarian society of Sri Lanka, with its cycle of sowing, growth and harvesting, the harmony of nature and human beings was maintained. But through the process of population growth, accelerated agricultural development, industrialization and rapid urbanization, this harmony has been disturbed. Sri Lanka's growing population has necessitated sustained social and economic development, especially in keeping with the expanded utilization of the natural resources and the environment.

1.2.2 Paradoxically, most of Sri Lanka's environmental problems have resulted from the efforts made to accelerate development itself. Some of these problems could be attributed to the growth and extension of primary export activities which had serious effects on the depletion of the best located and once luxurious natural resources such as forests, marine life and agricultural land. Yet, other problems were related to the process of "modernization". This has been especially so in agriculture, industry, transportation, urbanization and the attempts to keep in line with the lifestyles and patterns of the Western Industrialized World. Also, there has been problems caused by the pressure of the growing number of displaced rural and urban poor on increasingly scarce land resources, leading to degradation and depletion of the resources.

1.2.3 The rapid growth of population has to be regarded as a major source of stress on environmental resources. Increased numbers of people inevitably lead to increased environmental pressures. Although Sri Lanka has been successful in controlling rapid urbanization, through peasant resettlement and industrial dispersal policies, there has been an uncontrolled growth of urban centres. One significant effect of this urban growth has been the growth of marginal settlements—urban slums and shanty towns where water supply, sanitation and other services are either non-existent or at least minimal.

1.2.4 In Colombo, the Capital City of Sri Lanka, almost 50 per cent of the population live in these marginal settlements. At the same time, Sri Lanka also faces an enormous backlog in housing—specially urban housing together with a shortage of resources for investment in housing. Also connected to the rapid population growth, specially perceived in urban areas, has been the pressure created on sanitation and other public services. Water supply, waste disposal, health care, education and food needs have to be provided for. But such infrastructure and services have fallen short of the growth rate.

1.2.5 Perhaps, the most serious environmental effect in Sri Lanka has been the accelerated deterioration and loss of resources essential for agriculture. Such resource deterioration included soil erosion, salinization, loss of agricultural land to urbanization, crop damage due to increasing water pollution, extinction of local and wild crop strains and frequent water shortages. Throughout the country, there was evidence of soil erosion, and humus loss occurring in agricultural areas, as

a consequence of routine agricultural practices. There have been exceptions like terraced rice cultivation which appeared to be the most soil conserving of all routine practices and where man worked in partnership with nature.

1.2.6 Another adverse impact of the intensification of agricultural development has been the amount of deforestation in the country—specially on hill slopes. Clearing of forests has accelerated soil erosion, accompanied by increased seasonal flooding, low flows and siltation. On the other hand, agricultural land has become increasingly subjected to intensive uses of urbanization and industry, which is in effect a paramount loss for food production. Over and above losses to the growth of urban population and industrial development, agricultural land was also lost to the expanding settlements and villages. Another serious and adverse environmental consequence of agricultural development has been the increasing use of herbicides and pesticides resulting in disturbances to the regeneration capacity and sustainability of the natural ecosystems.

1.2.7 The loss of forests is one of the most serious environmental problems in Sri Lanka. It is estimated that only 21 per cent of the island's forest cover is remaining. Deforestation has destabilized water flows, leading to siltation of streams, reservoirs, and irrigation works, to depletion of ground water, intensified flooding, and aggravated water shortages during dry periods. In the past, in the commercial timber exploitation very little effort has been made to manage the forests for perpetuity, with most of the non-commercial vegetation too destroyed by logging operations.

1.2.8 In addition, land had been cleared for agriculture, frequently by burning, with even valuable timber used sometimes only for fire-wood. Unfortunately, the existing land-use trends have offered little hope for the conservation of Sri Lanka's forests, and the increasing population has had no alternative to clearing the forests to meet their needs. The requirements of fire-wood, agricultural plots, land for grazing animals, and material for village construction work can be expected to grow in the future and prospects for amelioration of these trends have been a critical problem faced by Sri Lanka. The technical feasibility of several programmes to offset the adverse effects of deforestation have been examined in recent years. However, significant conservation and reforestation programmes in Sri Lanka will require more resources and enforcement authority backed by sociological research on community participation through rural institutions, etc.

1.2.9 The various facets of development and modernization have had adverse consequences on the water resources of Sri Lanka. The effects of deforestation obviously leads to intensified extensiveness of floods and droughts. It can be expected that the water retaining properties of the soils will further deteriorate with the growing needs of the expanding population. In addition, in Sri Lanka, there has been a number of river basin development projects which provide many benefits like irrigation for increased food production, hydro-power for development, etc. These projects also have caused some adverse changes such as the total loss of valuable land to reservoirs, the creation of artificial lakes which can often become habitats for disease, vectors, displacement of population and the depletion of downstream fishery resources.

1.2.10 Another environmental effect of development has been the pollution of water and waterways. Sri Lanka has not been able to afford heavy investment in urban and industrial waste treatment facilities. As a result, waterways have become polluted with sewage sludge as well as waste from factories, tanneries, slaughterhouses, chemical plants, etc. One consequence of water pollution has been the adverse effects on the fish population as evidenced recently in the death of fish in the Kelani River. Another source of water pollution has been from the increased use of fertilizers and pesticides in agriculture. As a result, fresh water, once an abundant source in most parts of Sri Lanka, has become increasingly scarce due to greater contamination by pollution, and by the deterioration of the river basin catchments and watersheds.

1.2.11 Environmental problems in Sri Lanka also include the degradation of the marine environment. A dramatic growth in coastal pollution emptying into estuaries have been dammed for development. Coastal industrial and tourist facilities have expanded while coastal coral mining has increased. These development activities have reduced the diversity, productivity, and stability of the marine environment.

1.2.12 Mangrove communities have been destroyed to make way for other forms of land use such as urban development, industry, tourist resorts, etc. The loss to the marine environment of coral reefs which are among the most extensive and productive marine communities, has also been catastrophic. The continued destruction of corals by mining has affected the marine environment and its productive and protective capacities. In addition, coastal waters have constantly been polluted through effluent discharges, dumping, etc.

1.2.13 The use of fuel-wood as a form of domestic energy is widespread throughout the country. The rapidly increasing prices of fossil fuels since 1973, has raised the demand for fuelwood. The primary environmental consequence of fuelwood consumption has been the increasing abuse of forests. There has also been environmental damage from mineral production—mainly gem mining. Gem mining operations, in addition to disturbing the earth's surface, have been responsible for erosion, damage to river beds, and for the impairment of scenic beauty.

1.2.14 The absence of environmental dimensions in economic planning merits serious consideration. Hitherto environmental considerations had not been fully integrated in the development planning process. One of the major reasons for this was the absence of effective environmental legislation. Also another obstacle was the lack of knowledge on environmental issues at the policy making level, and the presumption, specially among planners, that environment and development are not in conflict.

1.2.15 In Sri Lanka, there are examples where large resources have been irrationally exhausted, depleted and deteriorated in the process of development. It has happened across sectors—in agriculture, in industry, in forests, farms, the coast and the offshore. There had also been a dramatic neglect in the use of renewable resources and residues, which would have provided answers to the current concerns of stabilizing the environment, and also for meeting some of the economic problems in the supply of food, fuel, fertilizer, construction materials, etc.

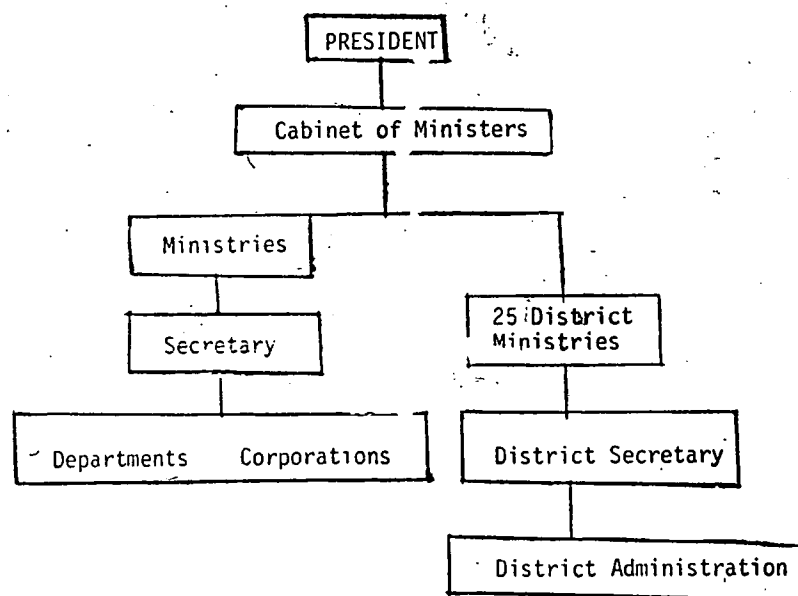
CHAPTER 2

2. GOVERNMENTAL SYSTEM AND THE CONSTITUTIONAL PROVISIONS FOR LEGISLATION

2.1 The National Administrative Structure

2.1.1 Under the Constitution of Sri Lanka, the President is the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces. He is also the Head of the Cabinet of Ministers, which is charged with the direction and control of the Government of the Republic of Sri Lanka. Each Minister is a Head of a Ministry of which the Chief Executive Officer is the Secretary. State Agencies like Departments, Corporations and Boards are arranged under each Ministry, as required.

2.1.2 There are 25 District Ministries headed by an equal number of District Ministers. The District Secretary functions as the Chief Executive Officer of the District. He also functions as the Government Agent of the District and the Secretary to the District Development Council concurrently. The overall National Administrative structure can be shown in a chart form as follows :—



2.2 The Political Setting

2.2.1 Sri Lanka has a long history of Parliamentary democracy. Since Independence in 1948, the Government has changed hands several times between the two major centre parties—the United National Party and the Sri Lanka Freedom Party. Smooth and peaceful transfer of power through the ballot box has been a consistent feature of Sri Lanka's political life. Nonetheless, given Sri Lanka's complex and

heterogeneous society, political development has not escaped factionalism. Frequent changes in government have often led to the disruptive changes in policy, institutions and personnel. Therefore, the necessity for freeing the political system from the trammels of the populist environment, in order to enable the implementation of a smooth and rapid transformation in the economy became paramount. With this end in view, the new government, which came to power in 1977, took advantage of its massive majority to reform the political system.

2.2.2 In 1978, Sri Lanka adopted a new constitution, replacing the 1972 republican constitution. The new constitution proved a departure from both its predecessor and the Westminster style constitution given by the British in 1948. The new constitution aims primarily at achieving political stability. To this end, it has drawn on both the US and the French systems, compiling an executive presidential form of government with proportional representation in elections.

2.2.3 It is designed to increase the powers of the executive of the Government and to insulate it somewhat from the pressures of the legislative process. The proportional representation system of voting, when combined with a strong executive provided by an elected President, envisages a stable political set-up. The office of the Presidency is held for a fixed term, and the office of the President is a fulcrum on which the new constitutional system rests. It gives weight and stability at the centre. Executive power is now concentrated in the hands of the President, who delegates responsibility to the Cabinet of Ministers who are accountable both to the Parliament and to the President.

2.3 The Legislative Process

2.3.1. The power to make laws, has been conferred under the Constitution of Sri Lanka to the Parliament. The Parliament of Sri Lanka consists of one hundred and sixty eight (168) members elected by the voters of the several electoral districts constituted in accordance with the provisions of the Constitution. Unless Parliament is sooner dissolved, every Parliament continues for six years from the date appointed for its first meeting. The sessions of the Parliament are presided over by the Speaker (or the Deputy Speaker or the Deputy Chairman of the Committees in his absence).

2.3.2 Legislation is proposed in Parliament by way of a Bill published in the Government Gazette at least seven days before it is placed on the Order Paper. The Speaker has to endorse on every bill that it has been passed by the Parliament and may also state the majority by which the Bill was passed. Subject to the provisions of the Constitution regarding a special majority, etc., a Bill passed by the Parliament becomes Law when the certificate of the Speaker is endorsed thereon.

2.3.3 A Legislative Bill to be so introduced in Parliament has to be drafted by the Legal Department, which is under the Ministry of Justice. The Legal Draftsman undertakes the drafting of Bills only on a directive from the Cabinet of Ministers. A Minister, who wishes to introduce new legislation, therefore, has to obtain the approval of the Cabinet of Ministers by presenting a Memorandum providing a justification for the new or amending legislation.

2.3.4 Such Memoranda are copied to all Ministers relevant to the proposal, and their comments are obtained before the Cabinet of Ministers takes a decision. The draft Legislation, prepared by the Legal Draftsman, on Cabinet directive is again submitted to the Cabinet for approval before gazetting as a Bill. Therefore, any proposals for legislation are subjected to scrutiny at the Cabinet Memorandum stage, at the draft stage, as well as at the Bill stage in the Parliament. New or revised legislation on the environment would also go through the same stages and the powers of the Central Environmental Authority under Section 10 (1)(k) of the National Environmental Act, include the power to report to the Minister upon any amendments it thinks desirable in existing legislation.

2.3.5. The entire island is covered by a network of Local Authorities viz. Municipal Councils in major townships, Urban Councils in minor townships and District Development Councils embracing the entirety of a District. However the District Development Councils cannot perform the functions that have been assigned by Law to the Municipal Councils and Urban Councils within their areas of authority.

2.3.6 Under the different Local Authorities Laws as well as under the different statutes there are provisions for the framing of subsidiary legislation with the approval of Parliament. These are known as Rules, Regulations, By Laws, etc. Once approved by Parliament they carry the same weight of the principal statute.

CHAPTER 3

3. NATIONAL STRATEGIES AND POLICIES FOR ENVIRONMENTAL PROTECTION AND MANAGEMENT

3.1. Background and History of Environmental Concerns

It was not until the United Nations Conference (1972) on the Human Environment that the subject of Environmental Management received serious consideration by the Government. In 1973, a Sub-Committee was appointed by the then Ministry of Planning and Employment, to review the state of the Island's environment and make recommendations to improve the environment. The different aspects of environmental management are governed by separate legal enactments and administered by different government agencies. Though many laws pertaining to environmental management were available, they were not implemented effectively. The Committee recommended the creation of a Central State Agency with statutory powers to enforce the implementation of the existing and proposed legislation pertaining to the environment through the various Departments concerned.

3.1.2. A joint UNDP/UN/ESCAP Mission that visited Sri Lanka in 1973 after a study of the country's environmental problems concluded that the absence of a central co-ordinating agency on environmental matters that can set policies, establish guidelines and bring about inter-ministerial co-operation and co-ordination was the major draw back in dealing with environmental problems.

3.1.3. In late 1976 and early 1977, a UNEP Adviser, who at the request of the Government submitted an interim report, pointed out that the current environmental protection and pollution policy is made up of several fragmental components and the laws pertaining to pollution control are inadequate. He recommended the creation of a Ministerial Sub-Committee on the environment, presided over by the Prime Minister to make continuous review of the environment situation of the country. He also recommended the establishment of a National Environment Office. A UN Adviser, who visited Sri Lanka in June 1977, at the request of the Government has recommended the creation of a Ministry for Energy, Science and Environment. All these three (03) reports have stressed the need for a Central State Agency to co-ordinate the existing fragmented approach to the environmental problems.

3.1.4. In 1978, the Government sponsored a Seminar on Environmental and Protection and Management with the objective of making recommendations to the Government on—

- (a) Desirable legal reforms ;
- (b) Appropriate institutional framework and administrative support services ;
- (c) Requirements for the dissemination of information, education and training ;

for the effective protection and efficient management of the environment.

3.1.5. On the basis of the recommendations made at this Seminar, which were totally accepted by the Government, a National Law on the environment was drafted. This Law, the National Environmental Act, No. 47 of 1980 came into operation from 12th August, 1981. The National Environmental Act also created the Central Environmental Authority, as the policy making and co-ordinating agency for environmental protection and management and filled a wide and longstanding gap created by the absence of an institutional frame work to co-ordinate environmental policy making and programming in Sri Lanka.

3.2. The Formulation of Policies and Strategies

3.2.1. The need for environmental protection and management is duly recognized and stressed in the constitution of Sri Lanka. The Constitution of the Democratic Socialist Republic of Sri Lanka in Chapter 6 Article 27(14) makes the following provisions: "The State shall protect, preserve and improve the environment for the benefit of the community". Article 28F of the constitution goes on to state: "The exercise and enjoyment of rights and freedom is inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka to protect nature and conserve its riches." Sri Lanka's policies on the environment have emerged from this commitment on the part of the State to maintain and improve the environment in order to enhance the quality of life.

3.2.2 The Hon. Prime Minister of Sri Lanka, issued a basic policy guideline on 12th August, 1981, when the National Environmental Act came into operation. The programmes and strategies for the protection and management of the environment in Sri Lanka, as well as the priority action programmes identified earlier, have been incorporated into these policy guidelines which are as follows :—

- (a) with a rapidly growing population and with the consequent income and resource requirements, Sri Lanka's development efforts have significantly affected the ecosystems and the resources base of the country ;
- (b) the processes of population growth, accelerated agricultural development, industrialization and rapid urbanization have disturbed the harmony between nature and human beings ;
- (c) serious pre-occupation with environmental problems is relatively a new phenomenon in Sri Lanka—although there have always been concern for issues relating to the environment, it was only during the last few years that new problems emerged that gave environment an entirely new dimension ;
- (d) most of these problems have resulted from the efforts made to accelerate development itself from the growth and extension of primary export activities, from the process of modernization of agriculture, industry, transportation, life styles, etc. the growth of cities devoid of urban infrastructure as well as from the pressure of growing numbers on increasingly scarce resources ;
- (e) poverty itself brings environmental degradation. Therefore, there is an urgent need for development. It is no longer possible to contrast the preservation of the environment with the necessity for development. Both are related and inseparable expressions of our capacity to improve our lives as well as to provide for the well being of future generations ;

- (f) Sri Lanka already has a number of laws, acts, regulations which are in one way or other related to the environment. Some of these laws date back to the last century while others are more recent. They cover a wide area and a variety of situations ranging from the preservation of forests to prevention of pollution. But these are scattered and administered by a variety of agencies at different levels of authority without overall co-ordination and policy directions. Therefore, the Central Environmental Authority, shall serve as a policy making and co-ordinating body for environmental protection and management.

3.2.3 The following are some of the strategies that have emerged commencing with the establishment of the Central Environmental Authority (CEA) :

- (a) the Central Environmental Authority (CEA), is a unique institution in comparison to other State Organizations. It does not have any regulatory powers. It is essentially a policy formulating and co-ordinating body. Its activities will be oriented more towards research, and education programmes and towards the formulation of a correct perception of environmental issues vis-a-vis the planning process ;
- (b) the absence of the environmental dimension in our attempts at planning and development also merited serious consideration. Environmental considerations had not been fully integrated into development plans. Therefore, a major task of the CEA from its early stages was to act as a central or 'lead' agency not only for carefully scrutinizing the planning and implementation of development projects which have an impact on the environment, but also to act as a data and information base on natural resources and the environment ;
- (c) the co-ordinating functions of the CEA in this context concluded, among other things the development of a National Environmental Code, formulation and promotion of environmental studies, environmental impact assessment development of legislation and the undertaking of research and training ; On the recommendation of the CEA the Government has made Environmental Impact Assessment (EIA) mandatory for all development projects both of the Public and Private Sectors with effect from 1st January, 1984 ;
- (d) Sri Lanka is faced with the absence of environmental standards as well as monitoring and assessment methodologies which the CEA has been called upon to develop and make available to guide the development process. This will help to create a fundamental understanding of the structure and dynamics of our ecosystems and assist in wiping out some of the exaggerations and contradictions of popular ecology ; The CEA has already issued interim standards for the control of the discharge of effluents and emissions into the atmosphere, soil, water, etc. ;
- (e) one of the primary activities of the CEA during the coming years will be education and training on environmental issues. Environmental education and training should not be treated as an isolated activity but as an essential component of the effort undertaken to give greater social effectiveness to education and training as a factor in national development. The integration,

of environmental education and training into the national educational process will have to be defined with regard to the characteristics of our environment and our social and economic goals. Such integration should cover formal and nonformal education as well;

- (f) associated with the task of environmental education and training is the responsibility of the CEA for the creation of increased environmental awareness at all levels. For this purpose the mass media will have a fundamental role to play. On account of its flexibility and power of penetration mass media constitutes a particularly suitable and viable means of reaching wide and varied audiences;
- (g) another keenly felt need is the choice of environmentally sound technologies which are crucial to the successful harmonizing of developmental and environmental goals. The task of the CEA here would be to identify and spell out their soundness in our ecological, social and economic context within the range of available technological options. Sri Lanka has to evolve a package of appropriate technology at an affordable level of capital intensity while fully utilizing her abundant labour surplus. In this context low waste techniques characterized by durable or recycleable products with low energy consumption and the lowest attainable adverse environmental impacts would be the most advantageous;
- (h) in Sri Lanka, there has been increasing involvement and commitment of non-governmental organizations in the protection and management of the environment. These organizations have been articulating the growing concern that continued worsening of the environment would eventually undermine the nation's capacity to support desirable standards of life. They have been producing especially for the creation of public awareness on the environment a large number of newsletters, posters, studies, etc. The CEA has been acting as guide and counsellor to these Non-Governmental Organizations while obtaining their assistance and co-operation in the implementation of national environmental programmes. The CEA also played a central role in the establishment of the Sri Lanka Environmental Congress which is the apex body for all NGO in the country;
- (i) central to the activities of the CEA would be the formulation of a National Conservation Strategy (NCS) based on the guidelines of the World Conservation Strategy. The Task Force appointed by His Excellency the President on the recommendation of the Hon. the Prime Minister has already commissioned 30 sector papers and the finalisation of the National Conservation Strategy is nearing completion. In the implementation phase the NCS will be incorporated into the planning process from project identification, design and construction phases to the operational and monitoring phases with the active participation and co-operation of the relevant Ministries. It is hoped that the NCS would be the "Magna Carta" for the reconciliation of the conflicts between conservation and development in Sri Lanka.

4. SURVEY OF ENVIRONMENTAL LEGISLATION AND INSTITUTIONS

4.1 Schedule of Legislation

4.1.1 In Sri Lanka, there are a number of Statutes, some dating back to nearly a century, in which there are scattered provisions on natural resources management, pollution control and environmental planning. The Schedule attached to this chapter contains a list of legislation with a bearing on the environment.

4.1.2. Some of these important laws which bear relevance to environment are being described below. The description of each law is in four parts:—

- (a) Name of Ordinance/Act/Law;
- (b) Brief description of provision with relevance to environment;
- (c) Shortcomings/inadequacies in the law;
- (d) Suggestions/recommendations to overcome these shortcomings/inadequacies.

4.2 Survey of Legislation

4.2.1 (i) Irrigation Ordinance of 1900 as amended by Act, No. 48 of 1968.

(ii) Irrigation Ordinance includes provisions for the regularization of irrigation water supplies and prosecution of wilful damage to irrigation works and waterways.

(iii) There are no specific provisions in this law for the protection of the environment in the course of its implementation. In addition, the law had been drafted at a time when Environmental Impact Assessment (EIA) requirements were not in use.

(iv) It is suggested that EIA requirements on irrigation works as well as provisions regulating protection of catchments and watersheds and control of erosion be introduced into this law.

4.2.2 (i) Land Development Ordinance of 1935.

(ii) Section 8 (f) of the Land Development Ordinance provides for the mapping out of state land for the prevention of erosion of soil, for forest resources and for preservation of catchment and other ecological purposes. Section 15 of this Ordinance provides for the formulation of regulations regarding the alienation of crown land over 5,000 feet in elevation.

(iii) The main inadequacy in this law seems to be the gaps in the implementation capacity. Hence the strengthening of the implementation machinery is essential.

(iv) A mechanism for monitoring the use of land at higher elevations and regulation of alienation and unauthorized use on land, on the slopes, hill tops, etc. seems to be required.

4.2.3 (i) Crown Lands Ordinance of 1947.

(ii) Section 49 of the Crown Lands Ordinance provides for declaration of crown lands as reservations for —

- protection of source, course, or bed of any public stream
- protection of springs, tanks, reservoirs, lakes, ponds, creeks, canals
- protection of foreshore
- prevention of erosion of soil

Preservation of water supplies.

Section 62 of the law provides for the protection of foreshore from the removal of sand, stones or coral or other substances. Section 72 provides for the management and control of the water in any public lake or public stream by vesting such management in the Crown.

(iii) Shortcoming of this law again is in the implementation and in the dispersal of its authority. The penalties stipulated in this law are also rather low.

(iv) This law has to be updated with regard to its implementation capacity as well as its penalties.

4.2.4 (i) Mines and Minerals Law, No. 4 of 1973.

(ii) This law provides for the vesting of absolute ownership of certain minerals in the Republic, to regulate the mining and prospecting for, collection, processing, sale and export of minerals, and to provide for the health and safety and welfare of workers in mines.

(iii) The main inadequacy of the law seems to be that the main implementation agency does not have the capacity or the regulations for its island-wide implementation.

(iv) Action has to be taken to provide the implementing agency with the necessary resources. In addition, action has to be taken to include EIA for large scale mining activities and include it as a provision under the law.

4.2.5 (i) Cosmetics, Devices and Drugs Act, No. 27 of 1980.

(ii) 2 (1) No person shall manufacture, prepare, store or sell any Cosmetics in any premises unless such premises has been licenced by the Cosmetics, Devices and Drugs Authority.

3 (1) No person shall manufacture, prepare, preserve, package or store for sale any Cosmetics under insanitary conditions.

3 (2) No person shall import, distribute, offer for sale or sell any Cosmetics that was manufactured, prepared, preserved, packaged or stored for sale under insanitary conditions.

9 (2) No person shall manufacture, prepare, store or sell any drug in any premises unless such premises has been licenced by the Cosmetics, Devices and Drugs Authority.

10 (1) No person shall manufacture, prepare, preserve, package or store for sale any drug under insanitary conditions or any drug which is adulterated.

10 (2) No person shall import, sell or distribute or offer for sale any drug that was manufactured, prepared, preserved, packaged or stored for sale under insanitary conditions.

(iii) Shortcomings have been noted in this law relating to the conservation, protection and management of the environment.

4.2.6 (i) Food Act No. 26 of 1980.

(ii) The Act, provides for control of contaminants like pesticide contaminants mycofloxine, heavy metals and biological contaminants. Regulations are being framed by the Food Advisory Committee stipulating the levels of contaminants that are permissible.

(iii) The Act is a fairly recent one and has few shortcomings. The legal provisions with regard to punishments for offences committed under this Act are inadequate. The penalties are not strong enough to be a deterrent.

(iv) The Food Advisory Committee has discussed the amendments to the Act that have to be made to enhance the punishments for offences under the Act.

Amendments to the Food Act Part III Section 18 dealing with offences have been framed. It is proposed to enhance the penalties so that these will act as a deterrent.

4.2.7 (i) Town and Country Planning Ordinance of 1946.

(ii) The scope of the Planning Schemes prepared under this Ordinance provides power pertaining to the conservation, protection and management of the environment.

(iii) The Law does not provide for monitoring of its implementation. All penalties passed under the Law are too low.

(iv) The newer Urban Development Authority Law has supported the provisions under this Law. The penalties imposed have to be increased.

4.2.8 (i) Housing and Town Improvement Ordinance of 1915 (Chapter 268)

(ii) This Ordinance is to regulate and promote developments in MCC, UCC and built-up areas declared under this Ordinance.

It provides for the better housing and improvement of Towns. Section 28(1) of this Ordinance empowers the framing of by-laws for regulating and preserving the character of special areas (Zoning Schemes).

Section 40 of this Ordinance empowers the Board of Improvement Commissioners to carry out 9 different Improvement Schemes as follows :—

- (a) A General Improvement Scheme,
- (b) A Redistribution Scheme,
- (c) A Rehousing Scheme,
- (d) A Housing Accommodation Scheme,
- (e) A Street Scheme,
- (f) A Street Intersection Scheme,
- (g) A Street Widening Scheme,
- (h) A Back Lane Scheme, and,
- (i) A Building Scheme.

The matters to be provided for by improvement schemes are given in Section 39 of this Ordinance and they are relevant to the conservation, protection and management of environment.

Under Section 64 of this Ordinance the local authority is empowered to demolish obstructive buildings that are unfit for human habitation or dangerous or cause a nuisance and injuries to health.

With regard to the insanitary houses unfit for human habitation, the local authority is empowered under Section 77 to obtain a "Closing Order" from the Magistrate prohibiting the use of such dwelling houses for human habitation until it is rendered fit for that purpose.

(iii) There are gaps in the implementation due to lapses on the part of local authorities. Also this Law does not cover non-built up areas.

(iv) The penalties for offences committed under this Ordinance must be revised and increased.

4.2.9 (i) Urban Development Authority Law, No. 41 of 1978, as amended by Urban Development Authority (Amended) Act, No. 70 of 1979, No. 2 of 1980 and No. 4 of 1982.

(ii) The Section (8) of the UDA Law which deals with its powers and functions contains the following provisions :—

8 (i) to formulate and implement an urban land use policy in areas declared as Development Areas.

8 (j) to develop environmental standards and prepare schemes for environmental improvements in such areas.

The Urban Development Authority Amendment Act, No. 4 of 1982 also has made it mandatory that Development Plans be prepared for all urban areas which have been declared under Section (3) of the UDA Law. The Development Plan can provide for among other things for the following, as per schedule to the Act.

(2) The Allotment, reservation or zoning of land for different purposes ;

(6) The provision for preserving and promoting landscaping including preservation and planting of woodlands, trees and preservation of views and prospects, places of historical architectural interest and scenic beauty ;

(7) The control of pollution, environmental quality and advertisements.

(iii) The shortcomings and inadequacies in the law with special reference to the legal provisions and the institutional aspects :

Legal provisions mentioned above are applicable only in urban areas which have been declared under section 3 of the UDA Law. However, about 85% of the total geographical area of the country does not come within the purview of the UDA as they are deemed to be rural areas.

The application of provisions regarding environmental protection requires definition of performance criteria regarding various types of development activities including industries. This requires detailed study and research on existing industries. The UDA has still not been able to develop such comprehensive criteria.

The enforcement of environmental standards and protection measures require regular monitoring of performance of the activities which involves not only qualified personnel, but also equipment and laboratory facilities. With the decentralisation of UDA planning activities to local authorities which have very limited qualified personnel and facilities, the monitoring and enforcement of environmental standards have become difficult tasks.

(iv) In order to extend the present provision regarding the environmental control to rural areas, either such areas have to be declared under the UDA Law or another Government Agency has to take over control. It will not be feasible to declare rural areas under the UDA Law as according to the law only urban areas can be so declared.

As an interim measure, the Housing and Town Improvement Ordinance can be updated and made applicable to non UDA areas.

4.2.10 (i) Forest Ordinance of 1907 as amended by Act No. 13 of 1966, Act No. 56 of 1979 and 13 of 1982.

(ii) Under Sections 6 and 7 of the Forest Ordinance the following acts have been prohibited in a Forest Reserve :—

(a) trespassing or permitting cattle to trespass.

(b) causing any damage by negligence by felling any tree or cutting or dragging any timber.

(c) wilfully stripping off the bark or leaves from or girdling, loping, tapping, burning or otherwise damaging trees.

(d) poisoning water.

(e) quarrying stones, burning lime or charcoal or collecting or subject to any manufacturing process, any forest produce.

(f) pasturing cattle, hunting, shooting, fishing or setting traps, snares, or guns or constructing or using ambushes or using any explosive substances.

(g) making any fresh clearing.

(h) setting fire or in contravention of any regulations made by the Minister, kindling any fire or leaving any fire burning.

(i) kindling, keeping or carrying any fire except at such seasons and in such manner as a forest officer may from time to time notify.

(j) felling, cutting, sowing, converting or removing any trees or timber or removing any forest produce.

(k) erecting, scaffolding or constructing a saw pit.

(l) clearing or breaking up any land for cultivation or any other purpose or cultivating any land already cleared.

(m) erecting any building whether permanent or temporary or occupying any building so erected.

(n) constructing or using any such road constructed.

(o) damaging, altering or removing any well, ditch, embankment, fence, hedge, railing or other boundary mark.

Under Section 14 of the Forest Ordinance following acts have been prohibited in a village forest :—

- (a) poisoning water or injuring by fire or otherwise any tree enumerated in Schedule I of the Forest Ordinance.
- (b) pasturing cattle; or cutting, marking, lopping, girdling, sawing, converting or removing any tree enumerated in Schedule I of the Forest Ordinance in contravention of any regulation made by the Minister under Section 14 (2) of the Forest Ordinance.

Under Section 19 of the Forest Ordinance cutting, marking, lopping, girdling, tapping or injuring by fire or otherwise of reserved trees as shown in Schedule II of the Forest Ordinance is prohibited.

Under Section 20 of the Forest Ordinance the following acts are prohibited in Forests other than village forests or Reserve Forests.

- (a) clearing, setting fire or breaking up the soil, making use of pasturage or of the forest produce except in accordance with rules made by the Minister.

Such rules are made to :

- (a) regulate or prohibit the cutting or setting fire to forest, or the issue of grant or leases by the Crown with respect to land on which trees enumerated in Schedule II are growing.
- (b) regulate or prohibit the kindling of fires, and prescribe the precautions to be taken to prevent the spreading of fires.
- (c) regulate or prohibit the cutting, sawing, conversion and removal of trees and timber and the collecting and removal of forest produce.
- (d) regulate or prohibit the building of houses or huts, the occupation of such houses or huts quarrying of stone or coral or the digging for plumbago or gems or the burning of lime or charcoal.
- (e) regulate or prohibit the cutting of grass and the pasturing of cattle.
- (f) regulate or prohibit hunting, shooting, fishing, poisoning water and setting traps or snares or guns, constructing or using ambushes or the use of explosives.
- (g) regulate the sale or free grants of timber or other forest produce.

Under Section 24 of the Forest Ordinance the Minister has made regulations to control transit of timber and other forest produce.

Under Section 54 of the Forest Ordinance cattle trespassing in forests is a punishable offence.

(iii) If a person is found guilty of a forest offence, committed by himself or made to commit by him, all forest produce involved in the offence and all tools, boats, carts, cattle and motor vehicles used to commit the offence are liable for confiscation. But usually such cases are taken up under Section 306 of the Criminal Procedure Code (CPC) and the productions are released.

Forest Officers are not in a uniformed service. If a uniform can be provided to these officers, law enforcement can be more effective.

(iv) Action has been taken to amend the Forest Ordinance so that the CPC cannot supersede the Forest Ordinance regarding confiscation of vehicles and tools involved in a forest offence.

4.2.11 (i) National Water Supply and Drainage Board Act No. 2 of 1974.

(ii) In terms of Section 37 of the Act the following are deemed to be offences ;

- (a) bathing in any stream, reservoir, aqueduct, or waterworks belonging to the Board or washing, throwing or causing to enter therein any dog or other animal,
- (b) throwing rubbish, dirt, filth or other noisome thing into any waterworks as aforesaid or washing of any cloth, wool, leather, or skin of an animal or other thing,
- (c) causing water of any sink, sewer, or drain, steam engine, boiler or other water belonging to him to run or be brought into any waterworks of the Board as aforesaid or doing any other act whereby water belonging to the waterworks be fouled.

Section 38 of the Act imposes a penalty for doing any act connected with any business by which the water in any stream etc.; belonging to the waterworks is fouled. Under the provisions of Section 40, the National Water Supply and Drainage Board has the power to construct sewer outfalls and treatment works.

Section 43 (i) makes it an offence to connect private sewers to any public sewer without authority from the Board. Section 44(i) makes it an offence to erect a building over a public sewer without the authority of the Board. Section 46(i) deals with sewers in new buildings. Such buildings shall be provided with sewers in the opinion of the Board, necessary for sewerage of such buildings and for collection and removal of any sludge, foul liquids or faecal matters. Failure to do so is made an offence.

Section 47 (i) deals with premises within 300 feet of public sewers. In such cases the Board may require the owner of such premises to do all or any of the following :—

- (a) to construct channels, sewers, gullies, manholes as may be necessary for the removal and discharge into such sewer or other fit place such sludge and foul liquids,
- (b) to construct water closets,
- (c) to reconstruct, take up and remove any existing sewer or appliance.

Section 51 (i) requires the owner or occupier of the premises within which a sewer is situated to keep it repaired, flushed and cleared.

Section 51 (2) the Board can by notice served on the owner or occupier, require an owner or occupier to repair, flush cleanse or clear such sewer.

Section 51 (3) states that if an application is made on that behalf by the owner or occupier or if the Board deems immediate action necessary the Board can repair, flush, cleanse such sewer.

Section 51 (4) the owner of any premises in which sewers are provided for the common use of the occupiers shall take such measures as may be necessary for keeping such sewers fixtures and appliances in a proper sanitary condition. If he fails to do so after being noticed, he shall be guilty of an offence and shall be liable to a fine not exceeding Rs. 50 on conviction.

Section 51 (5) where a sewer not being vested in the Board is provided for the benefit of more premises than one, the Board, may require the owner or occupier to execute all or any of the works aforesaid and the Board may in default of compliance execute the work and recover the expenses.

Section 52 (1) provides for the reconstruction of defective sewers and appliances. Any owner or occupier who fails or neglects to comply with requirements under 52(1) shall be guilty of an offence.

Section 55 (1) deals with new sewers. This Section requires that new sewers cannot be used without written permission of the Board. If such permission is not obtained such person shall be guilty of an offence.

Section 56 (1) deals with offences relating to the discharge of sludge, foul liquids, faecal matter into a drain or place which is not suitable to receive such discharge or into a land or place so as to cause a nuisance.

In terms of Section 56 (2) no person shall discharge into any sewer hot water, steam, etc. which would prejudicially effect sewers.

Section 56 (3) states that no person shall drop bricks, stones, etc. into a sewer.

Section 56 (4) states that without authority no person shall alter etc. any drain, ventilation pipe closet or other fitting or appliance.

(iii) The penalties mentioned are not sufficient and should be enhanced.

(iv) The National Water Supply and Drainage Board Act should also contain the following with respect to environmental pollution ;

- (1) Limits of quality of sewerage discharged into open waterways should be specified,
- (2) Limits of quality of industrial effluent into open waterways would be specified,
- (3) Any habitation in catchment areas should be prohibited. Boundaries of catchment areas should be demarcated. A penalty should be imposed for trespassing on such catchment areas.

4.2.12. (i) Plant Protection Ordinance of 1924.

(ii) An Ordinance enacted to make better provision against the introduction into Sri Lanka and against the spread therein of weeds and of pests and diseases, injurious to, or destructive of plants and for the improvement of the sanitation of plants in Sri Lanka.

(iii) The original Act of 1924 has not made provision for the changes that would become necessary by the several agreements and conventions Sri Lanka had to be signatory under the UN. The Law needs revision to improve and facilitate the

exchange of germplasm, precluding hazardous pests and for care, maintenance and sanitation of crops and forestry interests. The appropriate sectors in Health, Veterinary, Agriculture, Customs and Trade need coverage to adequately service the objects of the legislation.

(iv). A few amendments have been brought in mainly to fill in deficiencies but the scope and contents have not been enlarged.

4.2.13. (i) The Control of Pesticides Act No. 33 of 1980.

(ii) It provides for :

Safeguarding of pesticide quality to achieve the desired effect on pests without adverse effects on crops and on non target organisms in the environment (Section 15);

The safe use of pesticides if they are carried out in the manner and on the crops specified on the label (Section 8) ;

Safety of food crops which should only carry pesticide residues within permissible limits (Section 20).

Safe handling during packing, transport, and storage of pesticides (Sections 10, 12 14, 16 and 19).

(iii) Shortcomings of the Act in relation to the protection of the environment :

Though contravention of any of the aforesaid sections is liable to punitive action, yet no provision has been made for mandatory procedures to be followed to remedy the pollution of air, land or water from accidental spillage of pesticide formulations, careless disposal of pesticide wastes (including factory effluents and excess spray fluid), and unsafe disposal of empty pesticide containers and outdated pesticides.

The institutional framework for enforcing all aspects of the current Act on pesticides has yet to be developed. Inadequacies exist in the lack of resources such as trained and adequate manpower, expertise and skills for evaluating and analysing toxicological data and pesticide formulations, supporting laboratory facilities and for monitoring toxic residues on crops. The available resources are sufficient for only undertaking activities associated with the registration process and for adhoc checking on quality. The full evaluation of risks associated with the use of pesticides to humans, domestic animals, and environment must await infrastructural development.

(iv) Proposals :—

(a) *Provision of the Control of Pesticides Act.*—Unless already provided for under Acts being reviewed currently, the Control of Pesticides Act No. 33 would need to be revised in order to overcome the inadequacies indicated under (iii) above.

(b) *Provision of an Incinerator.*—Currently there is a threat to the environment and to humans from the large number of empty pesticide drums lying about in factory yards exposed to the atmosphere. There is no incinerator which could be hired out by pesticide firms for the safe disposal of outdated pesticides or of bulk containers in which pesticides have been imported for re-packing and sale in the country. It is proposed that the Municipality or the Central Environmental Authority provides

this facility for the incineration of empty drums, or a better alternative would be a mandatory provision for the Steel Corporation to accept the crushed and de-contaminated drums from importers for re-cycling.

(c) *Farmer Disposal of Empty Packs.*—With regard to the disposal of small packs by farmers and other users, before corrective action could be taken, it is suggested that a Study/Survey, is conducted regarding the current use and methods of disposal by farmers.

Medical Statistics indicate that over 70% of poisoning episodes are those within the 15-35 year age group. It is proposed that the Education Department includes a relevant section under Environmental/Social Studies in school curricula, so that it would be compulsory for school children to be knowledgeable on the hazards to health and the environment when pesticides are misused or abused.

4.2.14 (i) The Soil Conservation Act No. 25 of 1951.

(ii) (a) Cause surveys and investigations for the purpose of ascertaining the nature and extent of soil erosion and damage in any areas.

(b) Declare any area to be an erodible area and make regulations applicable in such areas.

(c) Require owners of land to adopt soil conservation methods, afforestation of sources of streams and stream banks, erection of check dams, contour ridges and terraces; prohibiting agricultural practices conducive to soil erosion; prohibiting exploitation of forests and grasslands in the interest of soil conservation and also requiring changes in cultivation practices.

(d) Compulsory acquisition of land in any erodible area under the Land Acquisition Act which should be withdrawn from cultivation.

(e) Provision of granting loans to effect soil conservation measures and empower the Director to have such measures undertaken and the costs recovered from owners of land who fail to do so.

(f) "Owner" in relation to any land has been defined to include the lessee or usufructuary mortgagee of the land.

(iii) At the time the Act was enacted, nearly all cultivated and cultivable land was under one Ministry except the plantations of tea, rubber and coconut which were under private management. In recent times, a large number of institutions have been made responsible for the management of land, cultivated or not, and therefore the provisions of the Act, do not seem to be capable of meeting the demands of the present day. The provisions of the Act, in its present form are to be implemented by the Director of Agriculture which cuts across a number of Ministries and Institutions.

The provisions of the Act are effective even in the present form. However, they have not been implemented for a number of reasons such as lack of technical personnel and economic, social and political considerations.

(iv) This legislation is desirable because in Soil Conservation it is sometimes necessary to look beyond immediate short term gains, towards a more long term and larger benefits.

However, action has never been filed in a Court of Law against defaulters as this line of approach was not favoured by successive Governments. Further, it is very unlikely that the penal provisions of the Soil Conservation Act would materially help in achieving substantial soil conservation unless two major shortcomings are rectified namely :

- (1) Soil conservation applied in isolated farming units are not fully effective, (particularly, where the farming units are very small as in the case of the peasant sector lands) unless there is provision to integrate the application of soil conservation measures in individual farming units on a watershed basis.
- (2) There are no strong incentives for incurring large capital outlays where some of the benefits accrue over a period of many years and are off-site, on adjacent and neighbouring lands of a watershed. Hence a subsidy scheme is required.

The implementation of the provision of the Soil Conservation Act and regulations framed under same cannot be undertaken by the normal extension staff of the Department of Agriculture, as extension and regulatory functions are not compatible for a village extension worker who has to be a friend of the farmer. A separate authority may have to take over the regulatory functions.

4.2.15 (i) Agrarian Services Act No. 58 of 1978.

(ii) Part II of the above Act deals with standards of good management of agricultural land. Certain responsibilities are placed on the owner cultivators and occupiers, which have to be discharged individually and collectively.

Section 34 (2) (b) stipulates that agricultural land should be cropped in such a manner as to maintain the land clean and in a good state of cultivation, fertility and in good condition including proper drainage.

Section 34 (2) (c) stipulates that irrigation water should be efficiently managed.

Section 34 (2) (d) stipulates that the land should be properly maintained in order to ensure maximum conservation of soil and water.

(iii) The enforcement authority of this Law should be the the Agrarian Services Committee formed under the Act. These committees should be empowered to frame regulations for the effective enforcement of the above provisions in their respective areas of authority.

(iv) The Agrarian Services Committees should be empowered to frame regulations in respect of the following matters among others ;

- (a) Recommendation of crops and other agricultural activities to be undertaken in their respective area.
- (b) Regulation of growing of crops in hill slopes.
- (c) Soil conservation methods to be undertaken by owner cultivators and occupiers.
- (d) Use of protective gear in the application of agro chemicals.
- (e) Prevention of industrial waste and effluents from flowing into paddy fields and minor irrigation works.
- (f) Stopping of indiscriminate felling of trees in reservations of minor irrigation works.

4.2.16 (i) Water Resources Board Act No. 29 of 1964 ;

(ii) It shall be the duty of the Board to advise the Minister on the following matters, and on any other matter that is referred to the Board for advice by the Minister ;

- (a) the control, regulation and development, including the conservation and utilization of the the flood control and hydraulic power ;
- (b) the promotion, construction, operation and maintenance of schemes of irrigation, drainage, flood control and hydraulic power ;

(c) the promotion of afforestation ;

(d) the control of soil erosion ;

(e) the prevention of the pollution of rivers, streams and other water courses ;

(f) the formulation of national policies relating to the control and use of the water resources of the country with the following objectives in view :

- the multi-purpose development and use of water resources ;
- the short-term and long-term provision of water resources for domestic supplies, industrial supplies, hydraulic power, hydro-electric power, irrigation, reclamation of land, flood control, navigation, development of fisheries, protection of wildlife, and control of soil erosion ;
- the disposal of sewerage and industrial wastes ;
- afforestation ;
- the control of salinity ; and
- any other like objective ;

(g) the preparation of comprehensive and integrated plans for the conservation, utilization, control and development of the water resources of the country ;

(h) the co-ordination of the activities of Government Departments, Local Authorities and Public Corporations, in regard to surveys of basic data and other investigations relating to river basin and trans-river basin development projects, soil classification, and the hydrological, geological and other similar aspects of the use of land ;

(i) the analysis of reports based on investigation, statistical surveys, plans and proposals relating to the water resources of the country made by Government Departments, local authorities and public corporations ;

(j) the preparation of a scheme of priorities in the matter of developing river-basin and trans-river basin projects ;

(k) the co-ordination of projects undertaken by Government Departments, local authorities and public corporations relating to the conservation, utilization and development of the subterranean water resources of the country, and the assessment of the possibilities, benefits and economic feasibilities of such projects ;

(l) the conduct of research by Government Departments, local authorities and public corporations on the utilization of water by various agricultural crops ; and

(m) any other suitable measures to be taken by the Government for the proper control and economic use of water.

4.2.17 (i) Ceylon Tourist Board Act No. 10 of 1968.

(ii) Part IV—Section 28 1 (c) (i)

It shall be the duty of the Board to prepare and submit to the Minister for the implementation, by statute of such tourist schemes as may be necessary for the establishment, regulation, supervision, development and control of tourist resorts. The mode and manner of establishing tourist resorts is described in the amending Act, the TOURIST DEVELOPMENT ACT NO. 17 OF 1968, Part I and Chapter IV.

The compulsory acquisition of land and vesting of Crown land in the Tourist Board for the purpose of any tourist development project to be carried out by the Board or by any other person.

Alienation of land for the implementation of any tourist development project by the alienee at his own expense. Alienee shall have no right to any timber in such land.

Part II—Chapter I, Chapter II

The Tourist Board shall have the power to prescribe the manner in which land alienated by it may be developed for tourist purposes.

(iii) Tourist development could not be confined within the resorts established by the Tourist Board owing to the rapid development of the industry in the late seventies. Tourist projects began to be established outside the resorts. This was made possible by—

- (a) the power of local authorities to approve building plans for such projects ;
- (b) the approval of tourist projects outside resorts by the Tourist Board as the demand for tourist accommodation had outstripped the supply.

The Tourist Development Act No. 14 of 1968 does not make provisions for the control of such projects by the Tourist Board.

(iv) A Bill to amend the Tourist Development Act is now before Parliament.

Provisions : Sec. 73A(1)—Where the Minister in charge of the subject of Tourism is of the opinion that activities designed and carried out for the purpose of providing facilities and services to tourists in any area, not being an area comprising a national holiday resort, requires to be regulated and controlled, he may, by Order published in the *Gazette* declare such area to be a tourist development area.

Sec. 73B.—The functions of the Tourist Board in relation to each tourist development area will include the regulation, control, maintenance and operation of tourist facilities.

4.2.18 (i) Tourist Development Act No. 14 of 1968.

(ii) Part III and Third Schedule

Protection of Highways and Places of Scenic Beauty and Control of Junk Yards

- (a) Regulations may be made prescribing a Code containing provisions necessary to promote the safety and recreational value of public travel and to preserve natural and scenic beauty. The provisions may apply to the following matters ;

Declaration (in concurrence with the Minister in Charge of the subject of thoroughfares) of any part of a highways as a "protected highway".

Declaration (in concurrence with the Minister in charge of the subject of Local Government) of any areas as a "scenic reserve."

((i) and (ii) above will render null and void any alienation of crown land in such areas. Prescriptive rights shall not apply to structures erected in such areas in violation of the provisions of this Act).

Prohibition or control of the display of advertisements near "Protected Highways" and "Scenic Reserves."

Specifying the distance from the centre of a "Protected highway" at which any advertisement may be allowed to be displayed.

Prohibition and control of the erection or alteration of any building, the planting or felling of trees or other foliage within a "Scenic Reserve."

Screening of junk yards and other unsightly structures from view in areas declared under (I) and (II) above.

Specifying offences under the Act and provision of penalties.

(iii) Offences need to be proved in a Court of Law. This entails the following obstacles and difficulties ;

Accurate identification of offenders from advertisements displayed, structures erected or junk stored.

Delays involved in litigation.

(iv) The present administrative arrangement initiated by the Central Environmental Authority whereby an Inter Agency Committee called the "Steering Committee on Control of the Visual Environment" has been appointed. This has enabled the Tourist Board to implement some of the provisions of the Act through co-ordination between different agencies facilitated by the work of the Committee.

Further, it is necessary to empower the Commissioner of Local Government and the Road Development Authority to remove or evacuate without compensation offending advertisements, structures or junk yards in areas declared as "Protected Highways" and "Scenic Reserves" respectively, upon a declaration by the Minister in Charge of the subject of Tourism published in the *Gazette* and communicated to the Minister in Charge of the subject of thoroughfares or the Minister in Charge of the subject of Local Government to the effect that the advertisement, structure or junk yard concerned has been erected or placed in violation of the provisions of the Act. Such removal or evacuation may be made obligatory unless the Minister in Charge of the subject of thoroughfares or the Minister in Charge of the subject of Local Government, as the case may be, has cause for retaining such structure or object.

4.2.19 (i) Fauna and Flora Protection Ordinance of 1937 as amended by Act No. 44 of 1964 and No. 1 of 1970.

(ii) This Law provides essentially for the protection of the fauna and flora of this country and includes the protection and conservation of its environment and management. The Ordinance was first enacted in 1937 and thereafter amended from time to time. It includes provision for the—

- (a) declaration by the Hon. Minister of National Reserves (national parks, strict natural reserves, nature reserves, corridors) and sanctuaries ; for acts which are prohibited within them with the penalties going with it for their violation,
- (b) protection of prescribed animals like the wild elephant, wild buffalo, deer, and junglefowl, outside reserves, the specific circumstances in which they can be captured or destroyed and the penalties going with it for their contravention. All fauna and flora within national reserves and sanctuaries enjoy absolute protection, under the Ordinance,
- (c) absolute protection of certain species of wild animals, birds and reptiles, outside these reserves, like the leopard, bear, turtles, dugong, water monitor (Kabaragoya), Giant squirrel, fishing cat, bear monkey and birds other than game birds during the closed season,
- (d) prohibition, control of export of wild animals (including elephant) birds, beasts and reptiles without a permit with the penalties going with it for their violation,
- (e) protection of certain specified orchids of rare aesthetic significance in certain specified areas,
- (f) general prohibitions like shooting among prohibited roads, with artificial light and from stationary or moving vehicles, and
- (g) exercising the trade or business of a taxidermist in wild animals or their flesh with the penalties going with it for their violation.

(iii) This Ordinance was last amended in 1970 and since then, it has been found necessary to introduce a number of amendments to cover certain loop-holes, inadequacies and in some cases impose mandatory fines and imprisonment for certain offences, not only in accordance with the present circumstances but also in keeping with modern trends and concepts.

(iv) The following amendments have been suggested to cover these inadequacies and loop-holes in the existing law :—

- (a) the overall enhancement of fines and other punitive measures e.g. for the shooting of an elephant or tusker the fine to be raised to Rs. 100,000 plus imprisonment,
- (b) killing of a leopard to Rs. 10,000 plus imprisonment,
- (c) absolute protection for deer and "fowl,"
- (d) protection of certain invertebrates and prohibition of their export,
- (e) prohibit introduction of exotic fish within a radius of 5 miles of a national reserve,
- (f) abolition of the provision for the issue of licenses for the shooting of prescribed animals,

- (g) adoption of a system of reverse listing for mammals, birds, reptiles and amphibians for their protection or destruction, as the case may be,
- (h) creation of certain categories of reserves, such as buffer zones, refuges, wetlands, and marine reserves,
- (i) include in the list for protection, additional trees of rare, historical or cultural significance,
- (j) protection of certain species of rare fresh water fishes.

The issue of permits to export wild animals, birds or reptiles or parts of such wild animals, birds and reptiles for commercial purposes is being strictly controlled. Export of ivory has been banned. No commercial export of elephants. Export of invertebrates even for scientific purposes are carefully scrutinized and checked. Applications to set up miniature museums in hotels and farms (crocodile and snake) are rejected and no further applications for licenses to carry on taxidermy or sale of wild flesh are entertained.

4.2.20 (i) National Aquatic Resources Research and Development Agency Act, No. 54 of 1981.

(ii) National Aquatic Resources Agency established under this Act could undertake environmental studies by virtue of the undermentioned provisions in the Act referred to—

Clause 4(b) V—"the development, management and conservation of aquatic resources in the inland waters, coastal wetland and off-shore areas."

Clause 5(j)—"to advise and make recommendations to any Ministry, any Government Department or Branch thereof, or any Public Corporation or any other person,

on research, management, development and regulation, including the conservation and utilization of the aquatic resources of Sri Lanka ; and

the formulation of national policies relating to the management and development of the national aquatic resources of Sri Lanka."

4.2.21 (i) Coast Conservation Act, No. 57 of 1981.

(ii) (a) The Act mandates the Coast Conservation Department to ;

- formulate and execute schemes of work for coast conservation,
- conduct research in collaboration with other agencies for the purpose of coast conservation,
- to prepare a Coastal Zone Management Plan,
- to regulate all development activities within the coastal zone via a permit procedure until the implementation of the Coastal Zone Management Plan.

(b) The Act also provides for :

- the Director to call for environmental impact assessments for those development activities that are deemed to have significant impact on the coastal environment.
- the Director to give directions for the prevention of intrusion of waste matter or foreign matter into the coastal zone.

(c) The Act provides for the establishment of a Coast Conservation Advisory Council charged with the responsibility of advising the Minister on all development activities proposed to be commenced in the coastal zone, reviewing the coastal management plan and environmental impact assessments.

(iii) The need to provide for a ban on coral mining and related activities such as possession of coral, operation of lime kilns to burn coral, transport of coral, etc.

The need to provide for the delegation of authority of the Director to Local Authorities other than the G.A.A.

The need to establish state ownership of beaches and assert right of public access to beaches. The need to strengthen police powers in respect of offences.

The need to re-define the coastal zone so as to include coastal habitats such as lagoons, estuaries, mangrove areas, etc.

(iv) Amendments to provide for 1—4 above have already been drafted.

A new definition of the Coastal Zone will be included in the Coastal Zone Management Plan.

4.2.22 (i) Fisheries Ordinance of 1940

- Fisheries Ordinance (1956 Revision)
- Fisheries (Amendment) Law, No. 20 of 1973
- Fisheries (Amendment) Law, No. 46 of 1973
- Fisheries (Amendment) Law, No. 7 of 1976
- Fisheries (Regulations of Foreign Fishing Boats) Act, No. 59 of 1979.

(ii) *Section 12*—Restriction of exportation of live fish or the eggs, roe or spawn of any species of fish for the time being included in the 1st Schedule of the Ordinance.

Section 12—Restriction of importation of live fish or eggs, roe, spawn of any non-indigenous fish.

Section 14—Amended by Fisheries (Amendment) Law, No. 20 of 1973 prohibits using of any poison, explosive or stupefying substance for killing fish within or outside Sri Lanka waters.

Section 15—Amended by Fisheries (Amendment) Law, No. 20 of 1973 prohibits the possession, sale or exposure for sale of any fish killed in the above manner.

Section 17—Makes provisions to grant exclusive rights to clubs or associations to take specified non-indigenous fish provided the club or the association has taken adequate arrangements for the preservation and protection of such fish in any stream or inland water.

Section 26—As amended by Fisheries (Amendment) Law, No. 20 of 1973 prescribes the offences and penalties for contravening of any provision of the Ordinance.

Section 27—As amended by Fisheries (Amendment) Law, No. 20 of 1973 prescribes special penalties for certain offences like using poison, etc. for killing fish and possession or sale of fish taken in this manner.

Section 33—Empowers the Minister to make regulations under the Ordinance over a wide range of subjects which include prohibition or restriction of taking fish during any specified period and establishment of closed seasons.

(iii) It has been noticed that adequate liaison is not been maintained between the Customs and the Ministry of Fisheries on the issue of import and export permits for live fish.

The penalties prescribed under the Ordinance are not adequate to act as a deterrent to prevent the contravening of the provisions or the regulations made under the Ordinance. Under the Fisheries Ordinance only fisheries officers are empowered to enforce the Ordinance. It is desirable that certain categories of law enforcement officers are also empowered to enforce certain provisions of the Ordinance, i.e. against dynamiting of fish, non-registration of fishing craft, etc.

(iv) A new Fisheries Act is being drafted where remedial measures could be incorporated.

4.2.23 (i) Chank Fisheries Act—1956 Revision.

(ii) An Act to make provision for regulating the taking of Chanks, Beach-de-mer, Coral and Shells, for regulating Chank Fisheries and the exportation of Chanks, and other matters incidental to or connected with the matters aforesaid.

(iii) Though there are provisions under this Act to make regulations for taking of Chank, Beach-de-mer, Coral and Shells, no regulations have been framed under the Ordinance, except for the banning of coral mining and transport of coral under the Coast Conservation Act.

(iv) The entire Act needs a revision.

4.2.24 (i) Pearl Fisheries Ordinance 1956 revision.

(ii) An Ordinance to amend and consolidate the law relating to the Pearl Fisheries of Sri Lanka.

(iii) This Ordinance has been drafted to suit the conditions which existed as far back as 1925 and does not suit the present conditions.

(iv) The entire Act needs a revision.

4.2.25 (i) Marine Pollution Prevention Act, No. 59 of 1981.

(ii) This Act provides for the prevention, reduction and control of pollution in Sri Lanka waters and to give effect to international conventions for the prevention of pollution of the sea for matters connected with or incidental thereto.

The International Conventions referred to are —

- (1) Prevention of Pollution of the Sea by Oil, 1954 and the subsequent amendments ;
- (2) Civil Liability for Oil Pollution Damage, 1969 ;

(3) The Establishment of an International Fund for compensation for Oil Pollution Damage, 1971 ;

(4) Intervention on the High Seas in case of Oil Pollution Casualties, 1969 ;

(5) The Prevention of Pollution from Ships, 1973 and the Protocol of 1978.

(iii) Even though the Minister appointed members of the Marine Pollution Authority as provided for in the Act, it was not possible even for the Board to transact any business due to lack of funds, request made to the Ministry of Finance and Planning in successive years for an allocation to implement the Act also did not meet with success, since the Treasury refused to allocate funds for new projects of a low priority.

Inadequacies in the law could not be identified as it was not implemented.

(iv) It is suggested that amendments be made to the main Act in order to establish a Marine Pollution Prevention Fund from which funds could be obtained to implement the provisions of the Act.

One of the means by which money could be obtained is by imposing fines on offending parties. It has to be pointed out however, that, in terms of para. 32 all fines levied under the Act should be credited to the Consolidated Fund.

4.2.26 (i) Factories Ordinance, No. 45 of 1942, Factories Amendment Act, No. 54 of 1961, Factories Amendment Law, No. 12 of 1976

(ii) The provisions in the Law pertaining to the conservation and management of the environment in a factory are—

Cleanliness in the Factory—*Section 6*

Overcrowding in the Factory—*Section 7*

Maintenance of reasonable temperature—*Section 11*

Securing adequate ventilation—*Section 12*

Provision of Suitable Lighting—*Section 13*

Provision of effective drainage—*Section 14*

Provision of sufficient and suitable Sanitary Convenience—*Section 15*

Precaution in places where dangerous fumes, etc., are liable to be present or where deficiency of oxygen is liable to occur—*Section 32*

Precautions with respect to explosive or inflammable dust, gas, vapour or substance—*Section 33*

In case of Fire—

(a) Means of escape—*Section 39*

(b) Safety Provisions—*Section 41*

(c) Instructions to use of means of fire escape—*Section 42*

Supply of drinking water—*Section 46*

Provision of adequate Washing Facilities—*Section 47*

Provision of Accommodation for clothing—*Section 48*

Removal of dust or fumes—*Section 51*

Precautions where asphyxiant or irritable gas or vapour is used or is liable to be present—*Section 51(A)*

Protection of eyes in certain processes—*Section 53*

Protection from radiation or vibration—*Section 53(A)*

Prevention of Noise—*Section 58(A)* of Factories Ordinance

(iii) The existence of a good number of Factories are not known to the Department as the Factory Owners failed to give the required notification at the time the factory was established.

Further, the site and plan of the Factory Building are not submitted for perusal so as to ensure that provisions of Health and Safety requirements are met in the Buildings as envisaged in the Law.

The Sections on offences and penalties are not effective enough.

The regulations framed under the Ordinance are inadequate. Action is being taken to frame the additional regulations that are essential.

The lack of trained staff, finances and transport to carry out effective enforcement and educational programmes.

(iv) Action is underway to redraft the Factories Ordinance with the addition of new provisions and amendments to existing provisions in order to make the Ordinance more effective.

In addition to the existing regulations, new regulations under the Section which had hitherto not been framed are being drafted.

Regional offices were opened in order to make the coverage more effective. However due to lack of staff accommodation and finances some of the regional offices are still operating from Colombo.

The services of the field staff in the Department of Labour such as the District Assistant Commissioners of Labour, Labour Officers, Medical Officers of Health in the Health Department and the Local Bodies are also sought to enforce the Ordinance.

The enforcement of the Ordinance could be made more effective with better co-ordination among the relevant Ministries who are engaged in the control of the working and living environment. This is specially so in the case of approval of building plans and import of machinery and raw material.

4.2.27 (i) Petroleum Ordinance (CAP 184) of 1887

(ii) This Ordinance was intended to regulate the importation, possession, transport and hawking of Petroleum and other products of a like nature. The subject of Petroleum is now the sole monopoly of the Ceylon petroleum Corporation as empowered by Act of Parliament, No. 28 of 1961 and subsequent Amendments.

This Ordinance was passed at a time when the Oil Companies were importing and distributing petroleum products. Many of the provisions relating to importation and distribution are therefore redundant. The provisions that relate to the survey of environmental legislation in Sri Lanka would therefore be possession, transportation and hawking of petroleum.

There is provision in this Ordinance for regulations to be framed by the Minister in charge of the subject for determining the ports at which petroleum may be discharged. There is also provision for the maximum quantities of petroleum that may be possessed and transported by any individual viz : by persons operating Filling Stations and Service Stations. Here again the Minister may from time to time make regulations under this Ordinance in relation to the granting of licenses to store petroleum after examining the nature of the premises, situation and such other criteria.

With regard to the hawking of petroleum it is only those who are licensed to hawk petroleum by the Minister in relation to regulations framed for the purpose in specially constructed containers are permitted to do so.

They should ensure that proper care is taken to prevent petroleum escaping in to houses, buildings, drains or sewers. Precautions also shall be taken to prevent accidents by fire or explosion and preventing persons who are not concerned with the sale from entering the premises.

(iii) There are penalties for the non-observance of the rules and regulations published by the Minister. However, it may be noted that this Ordinance is now outdated and punishments set out were in relation to the period when the Ordinance was enacted. The punishments will now need to be reviewed imposing higher penalties. The punishments include trial in the Magistrate's Court and if convicted, cancellation of the licence and the confiscation of petroleum products.

Rules made by the Minister from time to time under the Ordinance although they have the force of law, are insufficient in today's context and should be reviewed.

4.2.28 (i) Gas Ordinance CAP : 206-No. 1 of 1869 as amended by Ordinance No. 29 of 1947

(ii) This is an Ordinance relating to the supply of gas to municipal and other towns in Sri Lanka. This Ordinance empowers the relevant Minister to authorize any company having the necessary wherewithal to supply gas to the public viz. the supply of gas for domestic consumption and street lighting. The Ordinance empowers the company concerned to break up streets and open drains for the purpose

of lighting and to construct service pipes and conduits and make sewers necessary for the carrying of waste liquids and washings resulting from the manufacture of gas, with the minimum damage to the environment. Before the breaking up of any streets or drains for the above purpose the Ordinance requires that the Company should give sufficient notice to the local authority. The Ordinance also provides that streets and drains so broken up should be properly fenced, protecting passengers and that repairs to the roads and drains should be completed as soon as possible. Failure to reinstate the streets within a reasonable time or failure to give notice to the Local Authority, or storing of rubbish as a consequence of the breaking up are punishable offences. Where the Company pollutes any stream, reservoir, pond, etc. by communicating therewith any washing or other substance produced in the making or supplying of gas or where the water is fouled as a result the Company is liable for penalty.

(iii) However, it can be observed that as in the case of the Petroleum Ordinance the monetary value of the penalty is in relation to the situation that existed at the time this Ordinance was enacted. This needs to be reviewed.

4.2.29. (i) Sri Lanka Land Reclamation and Development Corporation Act, No. 15 of 1968, as amended by Law, No. 27 of 1976 and Act No. 52 of 1982.

(ii) One of the main objects of the Corporation is to reclaim and develop areas declared by the Minister as "Reclamation and Development Areas" (which is defined as low-lying, marshy, waste or swampy area) for building, industrial, commercial or agricultural purposes.

The Corporation shares the interest in declared reclamation and development areas with Local Authorities and other Authorities (Such as UDA).

No provisions, pertaining to conservation, protection and management of environment are incorporated in the Principal Act of 1968 and subsequent amendments.

In general environmental considerations are incorporated in Acts (Laws) of Local Authorities and other Authorities with whom the Corporation shares the interest in declared 'Reclamation and Development Area.'

(iii) Any environmental provisions required to be applied in declared Reclamation and Development Areas in general can be considered at each of the three phases of reclamation.

Pre-reclamation period

The main activities of this phase are—

Developing reclamation and drainage master plan ; and Construction of primary drainage system.

In general, primary drainage system consists of main drainage canals, detention areas, diversion dams and pumped drainage systems.

We make a distinction here between Primary Drainage System and Secondary Drainage System. Secondary Drainage System in general is imposed on areas developed for residential, industrial or commercial purposes, whose post-construction responsibility normally comes under the purview of local authorities.

Design and construction of a proper Primary Drainage System is a necessary prerequisite for reclamation and subsequent development activities which include secondary drainage systems. Inadequate primary drainage systems are one of the major sources of environmental hazards that we observe in developed areas. As such, it is a point where environmental control can be introduced.

Reclamation Period

Construction of primary drainage systems and reclamation activities do overlap and at certain stages they cannot be separated. Environmental considerations in this phase are many and of general nature applicable to construction and development activities.

Post Reclamation Period

Most important post-reclamation activity is control, maintenance and management of primary drainage systems. Inadequacies in this area will lead to—

- Misuse of primary drainage system ; and
- Misfunction of primary drainage system.

(iv) Sri Lanka Land Reclamation and Development Corporation is the authority responsible for the maintenance of canals in Colombo. It has met with numerous obstacles in carrying out this activity. No proper scheme of maintenance can be successfully carried out unless the obstacles that impede the carrying out of maintenance operations are overcome. This would need the co-operation of the general public, especially the inhabitants who occupy the canal banks, Government Departments and private owners of industrial plant situated along the canals, so as to prevent encroachment on the canal banks and waterways and also to prevent pollution of the canal water. This co-operation is a measure that may come spontaneously, without recourse to enforcement of legislative provisions.

For proper maintenance, the canal water and banks should be free of obstructions and free from pollution. The canal banks at present are extensively encroached by squatters and shanty dwellers, who dump garbage, raw sewage, and other refuse into the canals. Industries on the banks turn their industrial wastes without any sort of treatment into the canals thus polluting them. The powers to prevent the above encroachments and abuses are vested in local bodies and other Government Departments.

The limitations in the statutes as to the powers of the Corporation should be overcome and rectified so that the Corporation has the full legal authority and jurisdiction to take all steps and measures to minimise if not eliminate the drawbacks outlined earlier.

The Corporation should be vested with full legal powers to eject squatters, prevent new squatters encroaching on the canal banks, prevent obstruction to the waterways and prosecute anyone who pollutes the water by any means whatsoever.

Steps should also be taken to demarcate canal reservations. No local body should allow any building plan within these reservation limits. No local body or Department should construct any bridge, culvert or other structure over the canals without the approval of the Corporation, so as to ensure minimum waterway widths and head-room requirements.

4.2.30 (i) National Environmental Act, No. 47 of 1980

(ii) This Law makes provisions for the protection and management of the environment and for the establishment of a Central Environmental Authority with the following provisions :—

- (a) to administer the provisions of this Act and the regulations made thereunder ;
- (b) to recommend to the Minister, national environmental policy and criteria for the protection of any portion of the environment with respect to the uses and values, whether tangible or intangible, to be protected, the quality to be maintained, the extent to which the discharge of wastes may be permitted without detriment to the quality of the environment and long range development uses and planning and any other factors relating to the protection and management of the environment ;
- (c) to undertake surveys and investigations as to the causes, nature, extent and prevention of pollution and to assist and co-operate with other persons or Bodies carrying out similar surveys or investigations ;
- (d) to conduct, promote and co-ordinate research in relation to any aspect of environmental degradation or the prevention thereof, and to develop criteria for the protection and improvement of the environment ;
- (e) to specify standards, norms and criteria for the protection of beneficial uses and for maintaining the quality of the environment ;
- (f) to publish reports and information with respect to any aspects of environmental protection and management ;
- (g) to undertake investigations and inspections to ensure compliance with this Act and to investigate complaints relating to non compliance with any of its provisions ;
- (h) to specify methods to be adopted in taking samples and making tests for the purposes of this Act ;
- (i) to provide information and education to the public regarding the protection and improvement of the environment ;
- (j) to establish and maintain liaison with other countries and international organisations with respect to environmental protection and management ;

- (k) to report to the Minister upon matters concerning the protection and management of the environment and upon any amendments it thinks desirable in existing legislation concerning any portion of the environment and upon any matters referred to it by the Minister ;
- (l) to promote, encourage, co-ordinate and carry out long range planning in environmental protection and management ;
- (m) to encourage, promote and give effect to methods of converting and utilizing residues.

(iii) The experience of the last five years shows that the role of the CEA for the protection and management of the environment has to be further strengthened by enabling legislation on environmental quality and environmental protection. This has to be done in two ways :

- (a) amending the National Environmental Act by introducing new sections on Environmental Quality and Environmental Protection ; and
- (b) subsequently by the introduction of an up-to-date Environmental Quality Control Act.

LEGISLATION ON ENVIRONMENTAL PROTECTION AND MANAGEMENT IN SRI LANKA

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LEGISLATION	POLLUTION CONTROL						NATURAL RESOURCES MANAGEMENT								ENVIRONMENTAL PLANNING					PROCEDURES						
	WATER	AIR	NOISE	WASTE	COASTAL AND MARINE	CULTURAL	RESEARCH	SOIL	WATER	FOREST	LAND	COASTAL AND MARINE	PARKS AND WILDLIFE	MINERAL	RESEARCH	LAND USE	ECONOMIC AND SOCIAL	CONSERVATION	PRESERVATION AND HERITAGE	EDUCATION, TRAINING AND CULTURAL	RESEARCH	ENVIRONMENTAL IMPACT ANALYSIS	LICENSING AND REGISTRATION	PENALTIES	APPEALS	INSTITUTIONAL MANAGEMENT
1. Crown Lands Ordinance (1947)	..	x			x			x	x	x	x	x				x		x	x				x	x	x	x
2. Thoroughfares Ordinance (No. 10 of 1861)	..				x			x	x		x	x				x		x	x				x	x	x	x
3. River Valleys D. B. Act (No. 6 of 1965)	..	x						x	x	x	x	x				x							x	x	x	x
4. Water Resources Board (No. 29 of 1964)	..	x			x	x	x	x	x	x	x	x			x											
5. Nuisance Ordinance (1946)	..			x			x										x		x	x	x					
6. C.M.C. Water Works Ordinance (1907)	..																									
7. Mines and Minerals Law (No. 4 of 1973)	..																									
8. Soil Conservation Act (1951)	..													x	x											
9. Fauna and Flora Protection Ordinance (1937)	..							x								x	x	x								
10. Water Hyacinth Ordinance (1909)	..	x						x	x	x	x	x											x	x	x	x
11. Plant Protection Ordinance (1924)	..	x							x									x	x				x	x	x	x
12. Forest Ordinance (1907)	..								x	x														x	x	x
13. Felling of Trees Ordinance (1951)	..									x														x	x	
14. Fisheries Ordinance (1940)	..	x		x																					x	
15. Chank Fisheries Act (1890/1956)	..												x													
16. Peral Fisheries Ordinance(1925)	..	x		x									x											x	x	
17. Penal Code Sec. 271 (1883)	..		x										x											x	x	
18. Housing and Town Improvement Ordinance (1915)	..																							x	x	x
19. Town and Country Planning Ordinance (1946)	..	x														x			x		x		x	x	x	x

20. Tourist Development Act (14 of 1968)	..							x	x	x	x	x	x			x	x	x	x	x					x	x	x	x
21. Irrigation Ordinance (1900)	..																											
22. Ayurveda Act. (31 of 1961)	..																											
23. Ceylon Tourist Board Act (10 of 1968)	..																											
24. Ceylon Electricity Board Act (17 of 1967)	..																											
25. Atomic Energy Authority Act (19 of 1969)	..	x	x	x	x																							
26. Mahaweli Development Board Act (14 of 1970)	..							x	x	x	x	x																
27. State Gem Corporation Act (13 of 1971)	..							x		x	x																	
28. Coconut Development Act (46 of 1971)	..																											
29. Agrarian Research & Training ins. (5 of 1972)	..																											
30. Agricultural Productivity Law (2 of 1972)	..																											
31. Sri Lanka Fruit Board	..																											
32. Agricultural Lands Law (42 of 1973)	..																											
33. National Water Supply & Drainage Board (2 of 1974)	..	x						x	x																			
34. National Science Council Law (19 of 1968)	..	x																										
35. Maritime Zone Law (22 of 1976)	..																											
36. Wells and Pits Ordinance (1864)	..																											
37. Factories Ordinance (1942)	..		x	x																								
38. Gas Ordinance (1869)	..		x																									
39. Petroleum Ordinance (1887)	..		x																									
40. Urban Development Authority Law (41 of 1978)	..																											
41. Control of Pesticides Act (33 of 1980)	..	x						x	x																			
42. Cosmetics, Devices & Drugs Act (27 of 1980)	..																											
43. Food Act (26 of 1980)	..	x																										
44. National Environmental Act, (47 of 1980)	..	x	x	x	x	x		x	x	x	x	x	x	x	x													
45. Coast Conservation Act. (57 of 1981)	..	x																										
46. Marine Pollution Prevention Act (59 of 1981)	..	x																										
47. National Aquatic Resources, Research & Development Agency Act (54 of 1981)	..	x																										
48. National Resources, Energy & Science Authority of Sri Lanka Act. (78 of 1981)	..																											
49. Land Development Ordinance of (1935)	..																											
50. Control of Pesticides Act (33 of 1980)	..	x	x		x	x																						
51. Agrarian Services Act (58 of 1978)	..																											

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CHAPTER 5

5. REVIEW OF ENVIRONMENTAL LEGISLATION AND INSTITUTIONS

5.1. Deficiencies in the Legal Framework

5.1.1. Legislation which concretizes national policies reflect the degree to which environmental concerns have been nationally recognized. Today, most countries have a number of Laws, Acts, Regulations or Policy Directives which, in one way or the other are related to environmental concerns. Some of these Laws can date back to several decades ago, while others could be of more recent origin, illustrating the varied development of environmental awareness among policy makers and legislators. These legislative actions cover a wide area and a variety of situations ranging from management of resources and preservation of national heritage to prevention of pollution and to improvement of environmental health.

5.1.2. Some countries have elaborate legislation on environmental subjects, even establishing rigorous norms by which punitive action could be taken for the infringement of such laws. However, the extent and detail of legislation are usually in keeping with their priorities on environmental management as a whole as well as on specific subject areas. Although rigorous and elaborate legislation may be existing, the implementation can often be inadequate, as in Sri Lanka, due to a variety of reasons ranging from inadequate funds and personnel to sometimes the lack of a singleness of purpose and the mixture of priorities.

5.1.3. At present, in Sri Lanka, the parameters of what are to be considered environmental law are still evolving. Therefore, all laws and regulations leading to protection and enhancement of the environment have been included within the terminology of environmental legislation. However, there are only a very few laws which, apart from the National Environmental Act, are essentially environmental in character. Two of the more recent laws, the Coast Conservation Act No. 57 of 1981 and the Natural Resources, Energy and Science Authority Act can be considered the two valid examples. Scattered provision exists in various other statutes which are not primarily on the subject of the environment, but merely touch on it.

5.1.4. The legal aspects of environmental protection in Sri Lanka have taken several forms. Measures adopted have been either preventive, regulatory or punitive. They have been enforced administratively as well as judicially. However, it was not until 1978, that the need to rationalize the functions of state agencies for an effective, co-ordinated and integrated system of environmental protection and management was recognized, resulting in the National Environmental Act. The National Environmental Act deals with the environment in Sri Lanka in its totality and not on a fragmented basis. Thus, its primary concern is the establishment of management policies and institutional arrangements for the environment.

5.1.5. In the review and reformulation of Environmental Legislation we have to recognize the fundamental right of all human beings to an environment adequate for

their health and well being. Such Legislation should also take note of the responsibilities of the people and the Government to achieve sustainable development. The Constitution of Sri Lanka recognizes environmental protection and management as a fundamental right, obligation and responsibility of the State and the people. The following are some of the general principles on Natural Resources Management which may have to be embodied in the Legislation at the earliest opportunity.

- (a) That all human beings have the fundamental right to an environment adequate for their health and well being.
- (b) That the State shall conserve and use the environment and natural resources for the benefit of the present and future generations.
- (c) That the State shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, to preserve biological diversity and to observe the principle of optimum sustainable yield in the use of living natural resources and ecosystems.
- (d) That there shall be established adequate environmental protection standards and monitoring mechanisms.
- (e) That there shall be mandatory environmental impact assessment of development activities which may significantly affect the environment or use of natural resources.
- (f) That conservation is treated as an integral part of the planning and implementation of development activities.

5.2. Deficiencies in Existing Legislation

5.2.1. Some of the serious shortcomings and deficiencies in the existing Legislation and suggestions for improvement are summarised below :

- (a) Many of the laws were first conceived of and enacted during colonial times and some of them date back to the last century. The scope and nature of these laws are severely restricted as the principal objectives of colonial administration were oriented towards exploitation of natural resources, revenue collection and maintenance of law and order.
- (b) These laws were not enacted with conservation and resource management in mind. Even in making subsequent amendments conservation and development, environment and development and sustainable growth parameters have not been given due consideration. Therefore, there is a need to have a fresh look at all these laws with a view to introducing a total package of legal reforms covering all Legislation with a bearing on the environment.
- (c) Some of the laws are archaic and obsolete. For example the Pearl Fisheries Ordinance was passed to suit the needs of the 1920's. In the light of the vast changes that have taken place in the fields of environmental thought as well as in science and technology it will be extremely important that such laws are revised incorporating new concepts of conservation, resource management, monitoring, quality standards, impact assessment, etc.

- (d) Certain laws have not been implemented since enactment and some for a long time. A case in point is the Chank Fisheries Ordinance. It has been used very recently to introduce a ban on coral mining. However, it must be pointed out that no regulations have been framed under this law.
- (e) Some of the laws are woefully inadequate to meet the present day needs of resource management effectively. On the one hand there are huge gaps in Legislation. For instance there are no laws for the enforcement of Environmental Quality Standards and Environmental Impact Assessment of development programmes and projects. On the other hand certain laws lack provisions which are basic and fundamental to good resource management at issue. For example there is no provision in the Irrigation Ordinance to adequately protect catchments and watersheds. Also the subjects of water management, good husbandry, soil conservation etc., which are intimately interwoven with the use of water resources have no place in the law or have been scantily dealt with.
- (f) Many of the laws remain fragmented and scattered among several Ministries, Departments and such other agencies. There are two aspects to this issue. Firstly, when several institutions and organisations are called upon to deal with a given problem under their respective laws quite often there is divided responsibility and loyalty as well as lack of proper definition and direction. Secondly, co-ordination becomes extremely cumbersome and quite often impossible. This results in the different agencies attempting to redefine their boundaries, territorial limits and safeguard their rights and privileges without getting down to a job of work in the national interest. There is a crying need to examine all environmental legislation with a view to amalgamation, codification, rationalisation and integration so that the number of laws are reduced, made more effective, meaningful and easy to co-ordinate.
- (g) Many laws lack implementation capacity as well as capability. For instance the Land Development Ordinance does not provide for the monitoring of abuse of land in higher elevations nor the unauthorized use of land in steep slopes, hill tops and such other vulnerable and fragile areas.
- (h) There are serious shortcomings in law enforcement. They have their roots in lack of finances, transport, trained staff etc.,. Sometimes law enforcement is given a low priority as our political system demands going back to the people once in six years. It is mainly poverty that has driven the people to commit offences against the environment such as illicit felling of timber, unlicensed gemming operations, illegal coral mining or the unauthorized cultivation of steep slopes and stream reservations.
- (i) Quite often the penalties that can be imposed in terms of the laws are inadequate. Punishment should be deterrent and a lesson to everybody. Some of the fines that are prescribed in our laws are as low as Rs. 25 which is less than one U.S. Dollar. Offences against the environment should be categorized among the serious crimes and heavy penalties introduced without further delay.

- (j) There are several instances, where the provisions of one law supercede the other. A case in point is the Forest Ordinance, which provides for the confiscation of all productions including vehicles used to commit the offence. But, under the Criminal Procedure Code (CPC) there is provision to get the productions released. It is essential that such inconsistencies are removed as soon as possible.
- (k) Certain laws suffer from lack of authority to operate in all parts of the island or in some instances in certain essential specified areas. For example planning regulations cannot be enforced in 85% of the land area of the country as the Housing and Town Improvement Ordinance is applicable only in Urban areas and built up areas. Also there is another classic instance where the definition of the Coastal Zone in terms of the Coast Conservation Act does not include lagoons, estuaries and mangroves.
- (l) Some important laws cannot be implemented with full force as they do not provide for the stipulation of performance criteria. The Urban Development Authority Law has to be amended enabling the UDA to lay down environmental quality standards and guidelines for Environmental Impact Assessment.
- (m) There are several institutional problems. Certain offences which are of critical concern to the environment should be made non-bailable, punishments thereon enhanced and the powers of the law enforcement authorities considerably increased. There is a woeful inadequacy of supporting services. The lack of the required institutional buildup is clearly seen in the case of the Pesticides Act where there is a registration process but no arrangements have been made for analysing toxicological data, monitoring toxic residues and taking offenders to courts.
- (n) The grouping of subjects and functions under the different Ministries is not conducive to bringing about a properly co-ordinated and integrated approach to environmental management. There is an urgent need to regroup the subjects and functions under different Ministries and also to amalgamate the work of related Ministries performing similar functions.
- (o) There are several administrative bottlenecks which should be removed. The Agriculture Department officials who perform an extension function in soil conservation should not be called upon to engage in law enforcement in the same area of work. In the application of various rules and regulations there is lack of co-ordination, understanding and oneness of purpose. This can be clearly seen in the application of laws for the regulation of imports and exports of live fish.

5.3. Strengthening of the Central Environmental Authority

5.3.1. The Central Environmental Authority was created in 1981 under the provisions of the National Environmental Act of 1980 to provide explicit recognition to the pivotal role that environment must play in sustainable national development

The subject area of Environment cuts across a number of disciplines and, therefore, involves collaboration between, and co-ordination in the work of several Ministries and between Government and non-official bodies.

5.3.2. As provided for in the National Environmental Act, the CEA plays, an essentially co-ordinating and policy making role. The administrative and regulatory responsibilities of the Authority have been kept to the minimum.

5.3.3. It is essential that new legislation does not confer enormous powers to one authority or one agency. Such powers may lead to bureaucratic delays, obstructions to the development effort as well as to corruption. Therefore, new legislation should enable delegation of powers to other state agencies while the CEA will play the role of a nodal agency. This is the method that is followed in the development of environmental impact assessment procedures being implemented from January, 1984.

5.3.4. For this purpose, it is necessary that the powers and functions of the CEA under Section 10 of the National Environmental Act be strengthened by the inclusion of the following :

- (a) to be responsible for and to co-ordinate all activities relating to the discharge of wastes into the environment, and for preventing or controlling pollution and protecting and improving the quality of the environment ;
- (b) to issue licences to control the volume, types, constituents and effects of waste, discharge, emissions, deposits or other sources of pollution and of subsources which are of danger or potential danger to the quality of the environment or any segment of the environment ;
- (c) to require the submission of all plans for major projects and proposals and for changes in or abandonment of existing projects for evaluation of the beneficial and adverse impact of such plans or projects or proposals on the environment ;
- (d) to require any local authority to comply with and to give effect to any recommendations relating to environmental protection within the local limits of the jurisdiction of such local authority and in particular any recommendations relating to all or any of the following aspects of environmental pollution :
 - (i) the prohibition of the dumping of litter waste, garbage and sewage ;
 - (ii) the prohibition of the fixing of posters or bills on walls or buildings ;
 - (iii) the prevention of the discharge of untreated sewage or substandard industrial effluents into canals or waterways ; and
 - (iv) the control of the pollution of the atmosphere.
- (e) to require all agencies and instrumentalities of the government, as well as private corporations, firms and entities to prepare, and file and include in every action project or undertaking which significantly affects the quality of the environment a detailed statement on :
 - (i) the environmental impact of the proposed action, project or undertaking;

- (ii) any adverse environmental effect which cannot be avoided should the proposal be implemented ;
- (iii) alternatives to the proposed action ;
- (iv) a determination that the short-term use of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same ; and
- (v) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

5.3.5. Therefore it is required that additional chapters to the National Environmental Act based on the above powers and functions be drafted under the headings of—

- (a) Environmental Protection ; and
- (b) Environmental Quality.

5.3.6. Section 26 of the National Environmental Act already includes, powers of delegation of the Authority's powers and functions to any Government Department or Local Authority. These powers of delegation have to be enlarged to include Government Corporations or Boards and State officers.

5.3.7 Section 32 of the National Environmental Act has powers for the Hon. Minister to make regulations. These powers have to be further clarified by stating specific matters such as the prescription of standards, prohibition of discharges, etc. under which regulations should be made.

5.3.8. A new amended law incorporating the above suggestions to overcome shortcomings has now been drafted and it is expected to be in the statute book in 1987.

5.3.9. The ultimate success of the institutional framework as well as of the legislation, depends on the organizational structure of the institution itself as well as on its links with the district, divisional and local levels of administration. Most centralized state agencies of the government tend to be more and more exclusive, concentrating more and more on legal and research aspects of their functions at the expense of grass-root level co-ordination and obtaining a feed back. The National Environmental Act of Sri Lanka, has attempted to overcome this tendency with the establishment of District Environmental Agencies in each administrative district. As stated earlier, these agencies have the Chief Administrative Officer of the District as its Chairmen, and have thus become invariably linked to the district level administrative process.

5.3.10 All environmental laws and institutions are faced with the difficulties in implementing laws and checking the delinquency rate. In Sri Lanka, it has been customary for the public and specially the non-governmental organizations to bring possible adverse impacts on the environment to the notice of the authorities. The case of the abandonment of the exploitation of the Sinharaja Forest is a classic example of a success story due to the continuing efforts of voluntary organizations

5.3.11. Voluntary organizations are in the best position to bring about the kind of public awareness, motivation and commitment that are necessary in a multi-disciplinary, all pervasive area of activity like that of the environment. One of the areas in which voluntary organizations could be of immense use is in the provision of an early warning system.

5.3.12. Therefore, a central agency on the environment should necessarily work in association with Non-Governmental Organizations, which can be represented in consultative committees or specialized panels. In Sri Lanka, Non-Governmental Organizations are statutorily represented in the Environmental Council. They were also represented in various Steering Committees and specialized panels established under the CEA on particular environmental problems.

5.3.13. The National Environmental Act of Sri Lanka also provides for the issue of directions by the CEA to local authorities. Under this legal mechanism, the CEA can instruct the local authority to undertake environmental improvements or protection work. This arrangement is of much use, as in Sri Lanka the local authorities are responsible for planning approval for construction in urban and other built up areas, as well as for cleansing and some sanitary services. Under the new Development Councils Act, the District Development Councils, which replaced the local authorities of Village and Town Councils, are also responsible for the preparation and implementation of District Development Plans which would be obviously based on the local resources. These directions can cover the activities of these District Development Councils as well.

CHAPTER 6

CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

6.1. The Legal Framework

The following general principles on Natural Resources Management should be embodied in the Legislation at the earliest opportunity.

6.1.1. That all human beings have the fundamental right to an environment adequate for their health and well being.

6.1.2. That the State shall conserve and use the environment and natural resources for the benefit of the present and future generations.

6.1.3. That the State shall maintain ecosystems and ecological processes essential for the functioning of the biosphere, to preserve biological diversity and to observe the principle of optimum sustainable yield in the use of living natural resources and ecosystems.

6.1.4. That there shall be established adequate environmental protection standards and monitoring mechanisms.

6.1.5. That there shall be mandatory environmental impact assessment of development activities which may significantly affect the environment or use of natural resources.

6.1.6. That conservation is treated as an integral part of the planning and implementation of development activities.

6.2. Desirable Legislative Reforms

Some of the serious shortcomings and deficiencies in the existing Legislation and suggestions for improvement are summarised below :—

6.2.1. Many of the laws were first conceived of and enacted during colonial times and some of them date back to the last century. The scope and nature of these laws are severely restricted as the principal objectives of colonial administration were oriented towards exploitation of natural resources, revenue collection and maintenance of law and order.

6.2.2. These laws were not enacted with conservation and resource management in mind. Even in making subsequent amendments conservation and development, environment and development and sustainable growth parameters have not been given due consideration. Therefore, there is a need to have a fresh look at all these laws with a view to introducing a total package of legal reforms covering all legislation with a bearing on the environment.

6.2.3. Some of the laws are archaic and obsolete. For example the Pearl Fisheries Ordinance was passed to suit the needs of the 1920's. In the light of the vast changes that have taken place in the fields of environmental thought as well as in science and

technology it will be extremely important that such laws are revised incorporating new concepts of conservation, resource management, monitoring, quality standards, impact assessment, etc.

6.2.4. Certain laws have not been implemented since enactment and some for a long time. A case in point is the Chank Fisheries Ordinance. It has been used very recently to introduce a ban on coral mining. However, it must be pointed out that no regulations have been framed under this law.

6.2.5. Some of the laws are woefully inadequate to meet the present day needs of resource management effectively. On the one hand there are huge gaps in Legislation. For instance there are no laws for the enforcement of Environmental Quality Standards and Environmental impact Assessment of development programmes and projects. On the other hand certain laws lack provisions which are basic and fundamental to good resource management at issue. For example there is no provision in the Irrigation Ordinance to adequately protect catchments and watersheds. Also the subjects of water management, good husbandry, soil conservation, etc., which are intimately interwoven with the use of water resources have no place in the law or have been scantily dealt with.

6.2.6. Many of the laws remain fragmented and scattered among several Ministries, Departments and such other agencies. There are two aspects to this issue. Firstly, when several institutions and organisations are called upon to deal with a given problem under their respective laws quite often there is divided responsibility and loyalty as well as lack of proper definition and direction. Secondly, co-ordination becomes extremely cumbersome and quite often impossible. This results in the different agencies attempting to redefine their boundaries, territorial limits and safeguard their rights and privileges without getting down to a job of work in the national interest. There is a crying need to examine all environmental legislation with a view to amalgamation, codification, rationalisation and integration so that the number of laws are reduced, made more effective, meaningful and easy to co-ordinate.

6.2.7. Many laws lack implementation capacity as well as capability. For instance the Land Development Ordinance does not provide for the monitoring of abuse of land in higher elevations nor the unauthorized use of land in steep slopes, hill tops and such other vulnerable and fragile areas.

6.2.8. There are serious shortcomings in law enforcement. They have their roots in lack of finances, transport, trained staff, etc. Sometimes law enforcement is given a low priority as our political system demands going back to the people once in six years. It is mainly poverty that has driven the people to commit offences against the environment such as illicit felling of timber, unlicensed gemming operations, illegal coral mining or the unauthorized cultivation of steep slopes and stream reservations.

6.2.9. Quite often the penalties that can be imposed in terms of the laws are inadequate. Punishment should be deterrent and a lesson to everybody. Some of the fines that are prescribed in our laws are as low as Rs. 25/- which is less than one U.S. Dollar. Offences against the environment should be categorized among the serious crimes and heavy penalties introduced without further delay.

6.2.10. There are several instances, where the provisions of one law supercedes the other. A case in point is the Forest Ordinance, which provides for the confiscation of all productions including vehicles used to commit the offence. But, under the Criminal Procedure Code (CPC) there is provision to get the productions released. It is essential that such inconsistencies are removed as soon as possible.

6.2.11. Certain laws suffer from lack of authority to operate in all parts of the island or in some instances in certain essential specified areas. For example planning regulations cannot be enforced in 85% of the land area of the country as the Housing and Town Improvement Ordinance is applicable only in Urban areas and built-up areas. Also there is another classic instance where the definition of the Coastal Zone in terms of the Coast Conservation Act does not include lagoons, estuaries and mangroves.

6.2.12. Some important laws cannot be implemented with full force as they do not provide for the stipulation of performance criteria. The Urban Development Authority Law has to be amended enabling the UDA to lay down environmental quality standards and guidelines for Environmental Impact Assessment.

6.2.13. There are several institutional problems. Certain offences which are of critical concern to the environment should be made non-bailable, punishments thereon enhanced and the powers of the law enforcement authorities considerably increased. There is a woeful inadequacy of supporting services. The lack of the required institutional buildup is clearly in the case of the Pesticides Act where there is a registration process but no arrangements have been made for analysing toxicological data, monitoring toxic residues and taking offenders to courts.

6.2.14. The grouping of subjects and functions under the different Ministries is not conducive to bringing about a properly co-ordinated and integrated approach to environmental management. There is an urgent need to regroup the subjects and functions under different Ministries and also to amalgamate the work of related Ministries performing similar functions.

6.2.15. There are several administrative bottlenecks which should be removed. The Agriculture Department officials who perform an extension function in soil conservation should not be called upon to engage in law enforcement in the same area of work. In the application of various rules and regulations there is lack of co-ordination, understanding and oneness of purpose. This can be clearly seen in the application of laws for the regulation of imports and exports of live fish.

6.3. Strengthening of the Central Environmental Authority

6.3.1. As provided for in the National Environmental Act, the CEA plays, an essentially co-ordinating and policy making role. The administrative and regulatory responsibilities of the Authority have been kept to the minimum.

6.3.2. It is essential that new legislation does not confer enormous powers to one authority or one agency. Such powers may lead to bureaucratic delays, obstructions to the development effort as well as to corruption. Therefore, new legislation should enable delegation of powers to other state agencies while the CEA will play the role of a nodal agency.

6.3.3. For this purpose, it is necessary that the powers and functions of the CEA under Section 10 of the National Environmental Act be strengthened by the inclusion of the following:—

- (a) to be responsible for and to co-ordinate all activities relating to the discharge of wastes into the environment, and for preventing or controlling pollution and protecting and improving the quality of the environment.
- (b) to issue licences to control the volume, types, constituents and effects of waste discharge, emissions, deposits or other sources of pollution and of subsources which are of danger or potential danger to the quality of the environment or any segment of the environment.
- (c) to require the submission of all plans for major projects and proposals and for changes in or abandonment of existing projects for evaluation of the beneficial and adverse impact of such plans or projects or proposals on the environment.
- (d) to require any local authority to comply with and to give effect to any recommendations relating to environmental protection within the local limits of the jurisdiction of such local authority and in particular any recommendations relating to certain aspects of environmental pollution.
- (e) to require all agencies and instrumentalities of the government, as well as private corporations, firms and entities to prepare, and file and include in every action project or undertaking which significantly affects the quality of the environment a detailed environmental impact assessment statement.

6.3.4. Therefore it is recommended that additional chapters to the National Environmental Act based on the above powers and functions be incorporated under the headings of—

- (a) Environmental Protection ; and
- (b) Environmental Quality

6.3.5. Section 26 of the National Environmental Act already includes, powers of delegation of the Authority's powers and functions to any Government Department or Local Authority. These powers of delegation have to be enlarged to include Government Corporations or Boards and State officers.

6.3.6. Section 32 of the National Environmental Act has powers for the Hon. Minister to make regulations. These powers have to be further clarified by stating specific matters such as the prescription of standards, prohibition of discharges, etc., under which regulations should be made.